

Aboriginal Community Consultations on the Design of a Representative Body

Aboriginal Treaty Interim Working Group

June 2017

Table of contents

1.	Acknowledgement of Country	3
2.	Summary	4
3.	Aboriginal Treaty Interim Working Group	5
4.	Background.....	6
5.	Timeline.....	7
6.	Consultation approach.....	8
6.1	Face to face community consultations	8
6.2	Treaty circles	11
6.3	Online message stick.....	12
7.	Designing a representative body	13
7.1	Design principles.....	14
7.2	Model element: purpose.....	15
7.3	Model element: entity structure	15
7.4	Model element: representation.....	19
7.5	Model element: governance.....	28
7.6	Model element: funding.....	28
7.7	Model element: roles and function	29
7.8	Options and further consultation.....	29
Appendix A	Background and context.....	31
Appendix B	Entity design analysis	34
	Entity design rating system	35
	Company limited by guarantee analysis	38
	ORIC corporation analysis	40
	State owned company analysis	42
	Analysis of other entity structures	45
Appendix C	Comments from consultations	48
Appendix D	Dates of consultation	57
Appendix E	Aboriginal Treaty Interim Working Group terms of reference	58
Appendix F	Next steps	59
Appendix G	Slides from the face to face community consultations	60
Appendix H	Aboriginal Victoria forum summary	77
Appendix I	Communique from the Aboriginal Treaty Interim Working Group: May 2017.....	82



**A first step in Treaty is
that those who are
invisible become visible.**

Wodonga 2017

A note on language

Throughout this report we may use different terms for Aboriginal and Torres Strait Islander peoples. We recognise that words are both powerful and at times frail in that they cannot fully convey our meaning or intent. We acknowledge that the terms 'Aboriginal' and 'Indigenous' do not capture the diversity and complexity of Aboriginal and Torres Strait Islander peoples and cultures. Our intent is always to use terms that are respectful, inclusive and accurate.

When we use these terms we do so recognising and acknowledging that Aboriginal and Torres Strait Islander peoples are the first people of Australia and the Traditional Custodians of this land and its waters. We pay our respects to Elders, knowledge holders and leaders both past and present.

There are other terms that were commonly used and have particular meaning in the context of this project, in particular the reference to 'Community' in this report refers to all Aboriginal and Torres Strait Islander people who reside in Victoria.

This report is prepared within the context of Aboriginal and Torres Strait Islander communities living in Victoria and there is no suggestion or assumption that it is relevant or appropriate for any other context.

1. Acknowledgement of Country



EY acknowledges Aboriginal and Torres Strait Islander people as the first people of Australia and Traditional Custodians of this land and its waters. We pay our respects to Elders, knowledge holders and leaders both past and present.

2. Summary

In 2016 Aboriginal people in Victoria called for Treaty.

The state government accepted the call and asked Community to define how they wished to be represented in future Treaty negotiations.

This commenced a process of dialogue and discussion.

Up to 7,500 people have been engaged and responded since February 2016 – raising their voices on how they wish to be represented.

Through the first phase of consultation Community provided its instruction and direction on how a Representative Body should be designed.

In the second phase of consultation the shape of a Representative Body has emerged with clearly defined roles for voting and candidacy.

A final phase of work with Community remains that will complete the design of a Representative Body to take us closer to Treaty.

3. Aboriginal Treaty Interim Working Group

The Aboriginal Treaty Interim Working Group (Working Group) was established to consult with the Aboriginal people in Victoria (Aboriginal Community) on options for a representative body and to provide advice to both government and the Aboriginal Community on the next steps in the Treaty process (see Appendix E for their Terms of Reference). During this past phase of consultations the Working Group was scheduled to meet bi-weekly with all members participating on a voluntary basis and are required to report back their findings from the community consultations to the Aboriginal Community on model options. The Working Group was **not** established to negotiate Treaty/Treaties on behalf Aboriginal Community and are not and have not been paid for the work they have done since their establishment in July 2016.

The Working Group was established following a public expression of interest process and held its first meeting in July 2016 (see below table for membership). The Working Group is comprised of nominated representatives from Traditional Owners groups, state-wide Aboriginal community controlled organisations, and the Koori Youth Council as well as a number of suitably qualified and experienced individual community members who applied to join the Working Group through an expression of interest process.

Name of member	Affiliated organisation
Eleanor Bourke	Victorian Aboriginal Heritage Council
Mick Harding	Victorian Aboriginal Heritage Council
Janine Coombs	Federation of the Traditional Owner Corporations
Jeremy Clarke	Federation of the Traditional Owner Corporations
Tarneen Onus-Williams	Koorie Youth Council
Muriel Bamblett	Aboriginal Controlled Community Organisations
Wayne Muir	Aboriginal Controlled Community Organisations
Aunty Di Kerr	Independent Member
Paul Briggs	Independent Member
Jill Gallagher	Independent Member
Vicki Clark	Independent Member
Geraldine Atkinson	Independent Member

4. Background

In February 2016, the Aboriginal Community called on the Victorian Government to negotiate a Treaty. The Victorian Government has agreed to participate in Treaty negotiations but does not have a state-wide Aboriginal representative body (Representative Body) it can engage with to establish a Treaty negotiation framework or enable negotiations. As a result Treaty negotiations cannot begin. Beginning in October 2016 the Working Group, together with Aboriginal Victoria and EY, travelled across Victoria to talk with, and listen to, Aboriginal people to discuss how a representative body should be designed to represent them in Treaty negotiations. This journey continued throughout March and April 2017. Across the entirety of this journey we have reached up to 7,500 people, either face-to-face or online.

“Treaty” is a concept with many definitions and interpretations. We do not seek to limit what a Treaty can be, nor who will negotiate specific agreements. It may be that a Treaty becomes many treaties: a series of formal agreements. What we do know, as a community member declared in Mildura, “Treaty is an easy word to say, but it’s a very big job.”

Our continued journey across the State was yet another step along the path to Treaty. Its continued objective has been to seek further direction on the way in which a representative body should be designed. We began in 2016 by asking for instruction on the design principles and roles and functions of a representative body before again working with the Aboriginal Community in 2017 to determine what representation means to them. For further background and context to this process please see Appendix A of this report.

This report provides a summary of the journey during 2017 so far, a description of our approach to consultations conducted during March and April 2017 (Phase 2 Community Consultations) and summary of what we heard.

We also note the lessons learnt from the previous phase of consultations (Phase 1 Community Consultations, see Figure 1), particularly in terms of: the improvements to be made in how we communicate and better engage with Community; as well as empowering the Aboriginal Community to drive the consultations and discussions themselves. (See section 4 for the consultation approach.)

We visited six (6) locations where we discussed how representation would be reflected in the Representative Body, by exploring a consistent set of questions. The consultation sessions also enabled participants to hold the same conversation with their friends, family and community if they chose to. Please see Section 4.1 of this report for more information about the questions.

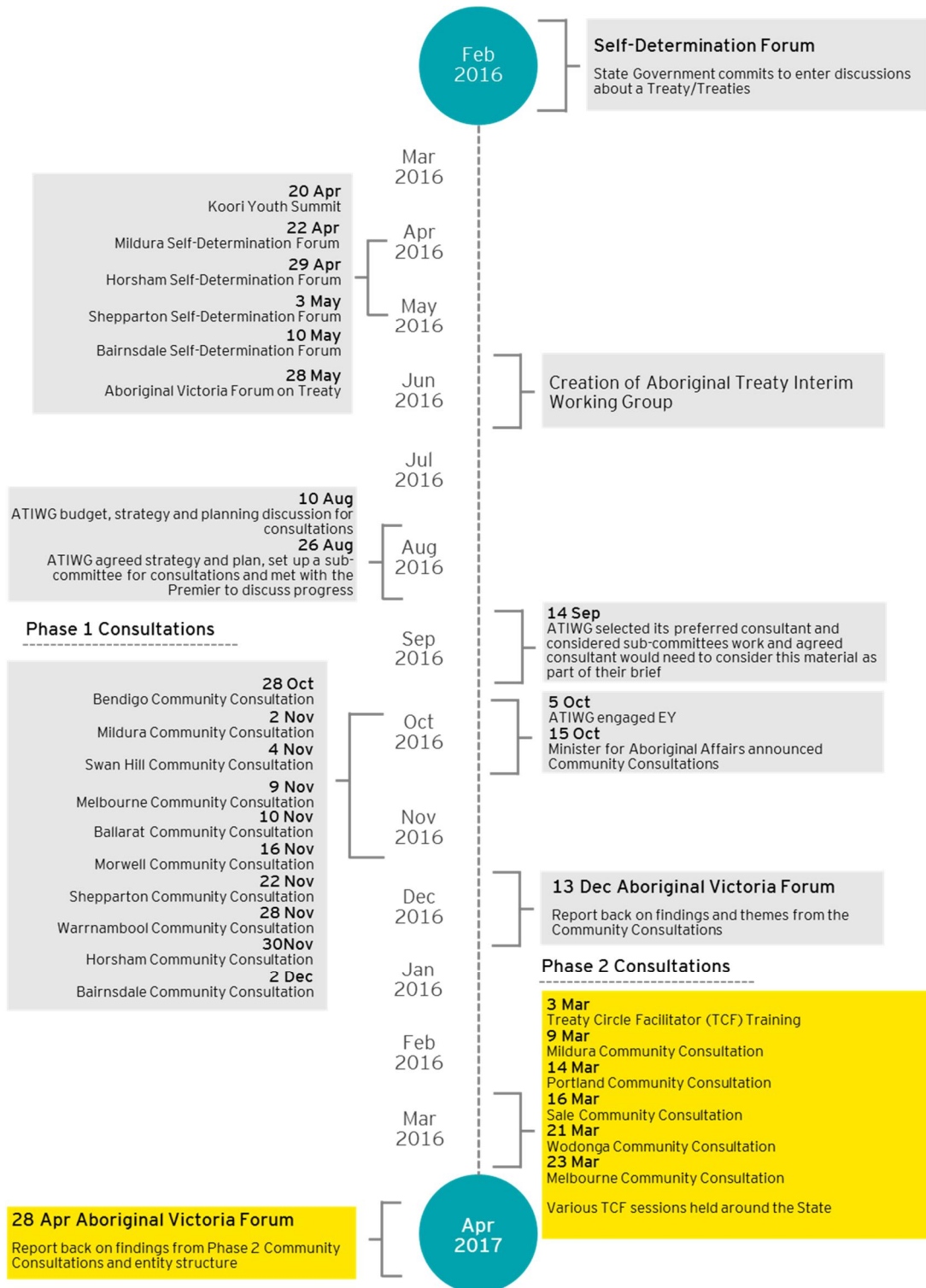
The information gathered during this phase has enabled the continued development of detailed options for representative structures that we share in this report. The findings from this report were presented and discussed at the 28 April 2018 State-wide forum in Melbourne. A summary of this forum is provided in Appendix H.

It must be noted that throughout this report we use the term Representative Body not as a working title but as a descriptive term so as not to pre-empt what the Representative Body can or cannot do.

5. Timeline

Figure 1 outlines the timeline of the Treaty journey, beginning in February 2016 through to the end of April 2017. This timeline shows all major events and consultations during that period with the most recent phase of consultations highlighted in yellow.

Figure 1. Timeline of Engagement



6. Consultation approach

The purpose of this most recent phase of consultations was to seek further instruction from the Aboriginal Community on the design of the Representative Body. There are six model elements required to establish the Representative Body. They are: purpose, entity structure, representation, governance, funding and roles and functions. The focus of the Phase 2 consultations was to seek direction on the 'representation' model element.

During the 13 December 2016 forum, the attendees provided clear direction on how to structure the next round of consultations in 2017. Attendees wanted the Aboriginal Community to lead their own consultations with an easily accessible online consultation platform and further face to face consultations. This resulted in the development of the following three consultation approaches:

1. Face to Face Community Consultations
2. Treaty Circles
3. An Online Message Stick

This approach – informed and endorsed by the Working Group – provided the best opportunity, given the time constraints, to engage with Community. It also reinforced the Working Group's commitment to delivering a process that is self-determining in its design.

6.1 Face to face community consultations

Six (6) Face to Face Community Consultations were conducted across the State to provide opportunities for the Aboriginal Community to be engaged in discussions on establishing a Representative Body. The Face to Face Community Consultations were designed to:

1. Inform participants on the background to the process
2. Discuss and answer questions on representation
3. Provide Treaty Circle training and information sessions in addition to data collection.

This provided more opportunities for participants to share their opinions on representation and decision making and give them the tools to go back into community and hold Treaty Circles.

The Face to Face Community Consultations were held at:

1. Echuca: Tuesday 7 March
2. Mildura: Thursday 9 March
3. Portland: Tuesday 14 March
4. Sale: Thursday 16 March
5. Wodonga: Tuesday 21 March
6. Melbourne: Thursday 23 March

The consultations were run between 10am-3pm and then repeated between 4pm-7pm at each location to allow people to choose between the day and the evening session. This again was aimed at ensuring maximum participation. The content of the Face to Face Community Consultations was consistent with Treaty Circles and the Online Message Stick.

To begin each Face to Face Community Consultation we: described the background, history, timeline and context of about the journey towards Treaty; explained what we were there to discuss; and

explained how the current process fits in with the pathway towards Treaty/Treaties. This provided each community with the opportunity to discuss its thoughts on Treaty and discuss the consultation process as well as understand why and what we were there to discuss with them.

We then proceeded to discuss the following elements of representation:

1. Voting – who can vote and how is voting organised
2. Candidates – who can be chosen as candidates and how
3. Electorates – How people are nominated to be on the Representative Body (voting boundaries)

To do this eight (8) questions were put to participants via a questionnaire. In formulating the questions, the Working Group took into account a series of considerations that have emerged during the Phase 1 Community Consultations. These include:

- How inclusive representation as a design principle is applied to each of these representative components
- The distinctive authority and roles of Traditional Owners, historical people and stolen generations
- How the voice of Aboriginal people is heard and addressed through regional and grassroots structures in a way that is culturally appropriate and practical.

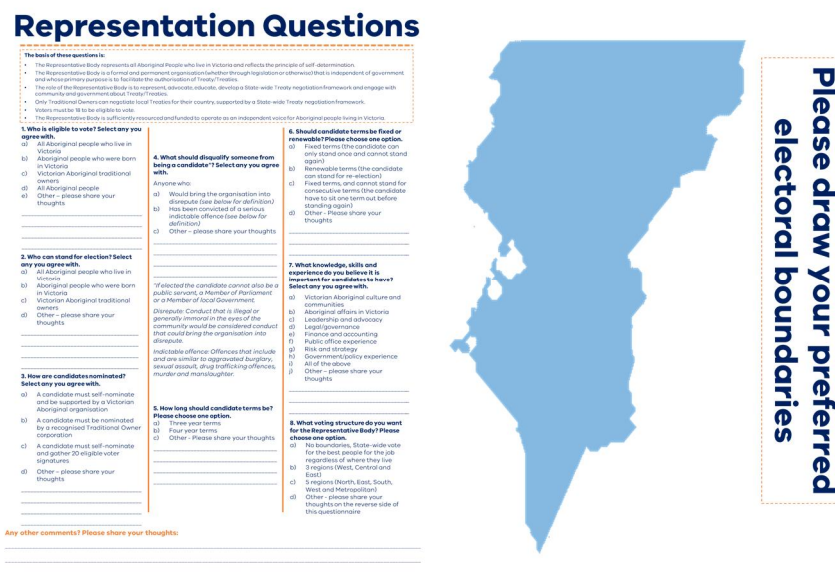
This resulted in the same questions being asked across all three part of the consultation approach. These questions were (please see Figure 2 below for a visual of the questionnaire):

1. Who is eligible to vote? Select any you agree with.
 - a) All Aboriginal people who live in Victoria
 - b) Aboriginal people who were born in Victoria
 - c) Victorian Aboriginal traditional owners
 - d) All Aboriginal people
 - e) Other – please share your thoughts
 2. Who can stand for election? Select any you agree with.
 - a) All Aboriginal people who live in Victoria
 - b) Aboriginal people who were born in Victoria
 - c) Victorian Aboriginal traditional owners
 - d) Other – please share your thoughts
 3. How are candidates nominated? Select any you agree with.
 - a) A candidate must self-nominate and be supported by a Victorian Aboriginal organisation
 - b) A candidate must be nominated by a recognised Traditional Owner corporation
 - c) A candidate must self-nominate and gather 20 eligible voter signatures
 - d) Other – please share your thoughts
 4. What should disqualify someone from being a candidate[^]? Select any you agree with.
Anyone who:
 - a) Would bring the organisation into disrepute (*see below for definition*)
 - b) Has been convicted of a serious indictable offence (*see below for definition*)
 - c) Other – please share your thoughts
- [^]*If elected the candidate cannot also be a public servant, a Member of Parliament or a Member of local Government. Disrepute: Conduct that is illegal or generally immoral in the eyes of the community would be considered conduct that could bring the organisation into disrepute. Indictable offence: Offences that include and are similar to aggravated burglary, sexual assault, drug trafficking offences, murder and manslaughter.*
5. How long should candidate terms be? Please choose one option.
 - a) Three year terms
 - b) Four year terms

- c) Other - Please share your thoughts
6. Should candidate terms be fixed or renewable? Please choose one option.
- Fixed terms (the candidate can only stand once and cannot stand again)
 - Renewable terms (the candidate can stand for re-election)
 - Fixed terms, and cannot stand for consecutive terms (the candidate have to sit one term out before standing again)
 - Other - Please share your thoughts
7. What knowledge, skills and experience do you believe it is important for candidates to have? Select any you agree with.
- Victorian Aboriginal culture and communities
 - Aboriginal affairs in Victoria
 - Leadership and advocacy
 - Legal/governance
 - Finance and accounting
 - Public office experience
 - Risk and strategy
 - Government/policy experience
 - All of the above
 - Other – please share your thoughts
8. What voting structure do you want for the Representative Body? Please choose one option.
- No boundaries, State-wide vote for the best people for the job regardless of where they live
 - 3 regions (West, Central and East)
 - 5 regions (North, East, South, West and Metropolitan)
 - Other - please share your thoughts on the reverse side of this questionnaire

Each question was multiple choice and included an 'other' option with space for each respondent to write their additional or alternative responses to ensure that we were not limiting respondents. Specifically, for question 8, on the back of the questionnaire there was a map of Victoria which was intended for respondents to draw electoral boundaries. Additionally, at the bottom of the questionnaire there was a space for any other comments that participants thought were important to share. (These comments were collated and are included at Appendix C).

Figure 2. Phase 2 Community Consultations Questionnaire



Each question was explained and discussed with participants and participants were asked to fill out the questionnaire if they would like to. Prior to commencing the discussion it was outlined to

participants that the Representative Body will be designed and based on the following principles that have emerged throughout the consultations in 2016:

1. The Representative Body represents all Aboriginal people who live in Victoria and reflects the principle of self-determination
2. The Representative Body is a formal and permanent organisation (whether through legislation or otherwise) that is independent of government and whose primary purpose is to facilitate the authorisation of Treaty/Treaties
3. The role of the Representative Body is to represent, advocate, educate, develop a State-wide Treaty negotiation framework and engage with community and government about Treaty/Treaties
4. Only Traditional Owners can negotiate local Treaties for their country, supported by a State-wide Treaty negotiation framework
5. The Representative Body is sufficiently resourced and funded to operate as an independent voice for Aboriginal people living in Victoria
6. Voters must be 18 to be eligible to vote

Having declared the above principles, participants at each consultation were asked to listen, ask questions and workshop the elements of representation through the questionnaire provided. The final part of the Face to Face Community Consultations was providing participants with the tools to go back to their family, friends and community to hold the same discussion they had just had through a Treaty Circle. This came in the form of a Treaty Circle Handbook – of which over 600 were handed out across the State during March 2017. This provided the Aboriginal Community not only with the tools to conduct their own Treaty Circle but also with a valuable and informative handbook with background, context and information around the entire journey towards Treaty.

Across the six (6) locations, over 200 people participated in the Face to Face Community Consultations, many of whom committed to going out and running Treaty Circles.

All responses to the questionnaire at the Face to Face Community Consultations were recorded in addition to the data recorded via the Treaty Circles and the Online Message Stick. All of the recorded ideas, discussion and data was analysed and provides the support for the findings in this report.

As part of this recording process, all Face to Face Community Consultations were filmed for record keeping purposes.

6.2 Treaty circles

Community called for a bigger role in the journey to Treaty and wanted the chance to talk about how and who negotiates Treaty/Treaties. As a result, during this round of consultations, the Aboriginal Community were able to choose to run and host their own Treaty consultations. Treaty Circles were conversations run by community members as Treaty Circle Facilitators, in their local area.

It was up to each Treaty Circle Facilitator to determine where and when each Treaty Circle was held. In total over 600 Treaty Circles handbooks were handed out across various forums and **16 Treaty Circles** were held. The conversation was based upon the questions described in Section 4.1. The success of the Treaty Circles resulted in over **240 questionnaire responses via the Online Message Stick and via post.**

Treaty Circle participants filled out the questionnaire either through the Online Message Stick or sent a hard copy questionnaire back to EY via post.

Treaty Circles were designed to allow the community to drive the next steps in the Treaty process. Their aim was to hear the community's voice about what they want the Representative Body to look

like whilst ensuring maximum participation by as many members of the Victorian Aboriginal community as possible.

6.3 Online message stick

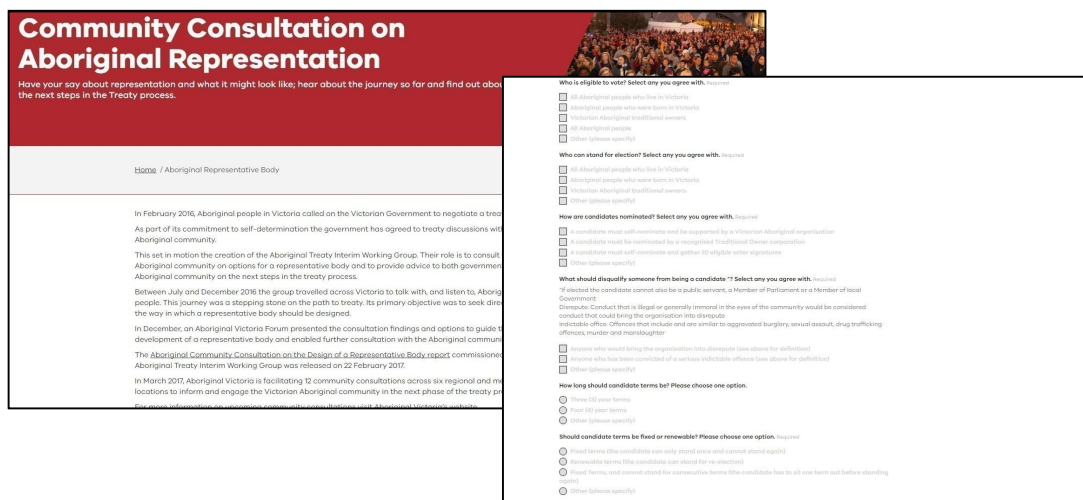
An online portal was created to supplement the Community Consultations and Treaty Circles as it was recognised by the Working Group that not all members of the Aboriginal Community would be able to attend the consultations or a Treaty Circle.

The online portal provided participants with the chance to provide their ideas and opinions on the same topics that participants in the Community Consultations discussed in their workshops (see Figure 3. Online Message Stick). This allowed for consistency in the recording and analysis of the online views.

The direct questions and focussed approach of Phase 2 Community Consultations meant that the Online Message Stick was easier to navigate and more accessible. Additionally, the Online Message Stick was promoted much earlier and more often. The uptake of the use of the Online Message Stick during the Phase 2 Community Consultations was greatly improved from the previous phase with over 160 online responses.

It must be noted that a set of duplicate entries in the Online Message Stick were identified. The duplicate responses were exactly the same in their wording and response selection and were submitted immediately one after another. The data results outlined in section 5.4 of this report reflects including those duplicate entries only once.

Figure 3. Online Message Stick



7. Designing a representative body

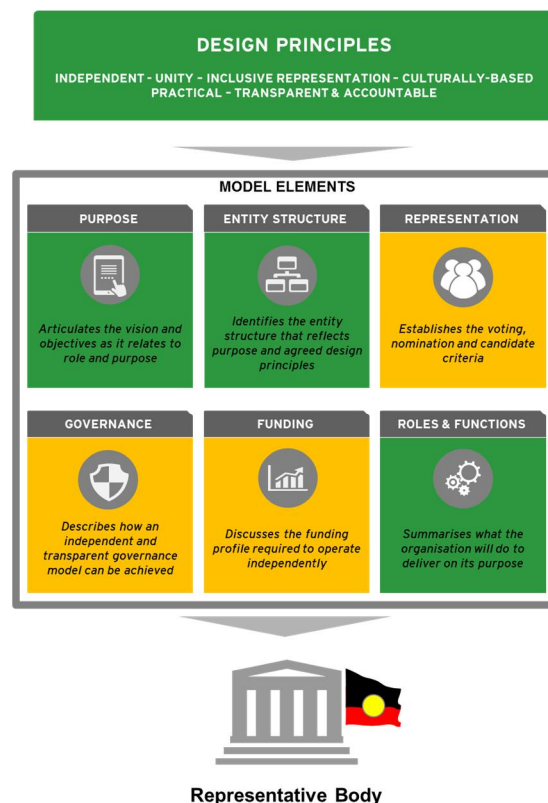
There are six model elements detailed in our Phase 1 report that are essential for the foundation of any organisation. These six model elements are: purpose, entity structure, roles and functions, governance, funding and representation. During the previous phase of consultations we sought instruction from the Aboriginal Community to define the Design Principles by which to design the Representative Body and which roles and functions the Representative Body should have. Figure 4 below outlines the interaction between the Design Principles and the model elements required to design and build an organisation. The approach for the consultations conducted in March through April 2017 was to build upon this work by focussing on the model element of representation, specifically:

1. Voting – who can vote and how voting is organised
2. Candidacy – who can be chosen as a candidate and how
3. Electorates – how people are nominated to be on the Representative Body (the voting boundaries)

There are a number of ways to implement and design each model element. For instance, there are many legal forms that an entity structure can take from a private entity like a proprietary limited company or a government entity like a statutory authority. To find a preferred option for each model element, the evaluation process was to take possible options and evaluate them against the Design Principles and data from Phase 2 consultation.

The progress of the design of each of the six model elements is discussed in more detail in the following pages of this report. To date the design of over half of the model elements have been informed by the instruction provided by the Aboriginal Community. Figure 4 outlines which of the model elements have been completed (in green) or are yet to be finalised (in orange). Each of these are outlined in more detail below in the relevant sections for each model element.

Figure 4. Representative Body Model Elements



7.1 Design principles

During the Phase 1 Community Consultations held in November 2016, the primary focus was to seek the views of the Aboriginal Community about the principles they would apply to the design of a Representative Body. The intention was to establish the foundational building blocks from the Aboriginal Community upon which to build the Representative Body.

In accordance with the concept of Free, Prior and Informed Consent (FPIC), the identification and definition of these Design Principles are an act of self-determination in that these principles become the instructions and direction from Aboriginal people in Victoria to those entrusted with building detailed options for a representative structure.

The principles shown below in Figure 5 and Table 1, summarise the eight (8) principles that were consistently discussed and defined by participants during the community consultations held in November 2016. It must be noted that in Figure 5, the principle of independence, is not listed as it formed part of our assumptions during the Phase 1 Community Consultations which was reaffirmed during every consultation session. The detail behind all Design Principles can be found in our report for the Phase 1 Community Consultations. These principles have formed the basis to develop and assess the options for the establishment of a Representative Body outlined in this report.

Figure 5: Design Principles % of comments

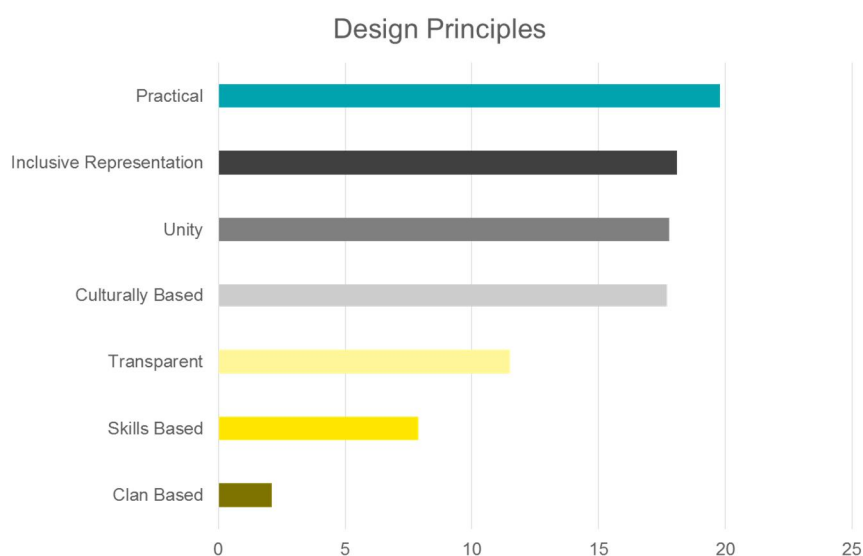


Table 1: Design principles

Design principle	Description/definition
Practical	Building and design of the Representative Body should be practical in that it is easily accessible for all members of the Community, simple in its structure, processes and operations, well-resourced and builds upon existing structures, frameworks and guidelines in place : “not trying to reinvent the wheel”
Inclusive representation	The Representative Body must be “Inclusive of all black fellas in the State”. This extends to all Aboriginal people living in Victoria including but not limited to Traditional Owners, Stolen Generation, all ages, all genders, LGBTI, Aboriginal people who are living off country in Victoria and members of families who have territory that crosses State borders
Unity	Community outlined the necessity of one cohesive voice, “we are one mob”. This should be composed of all aspects of the Victorian Aboriginal Community. This would ensure that there is equal representation that embraces the diversity of the Community to unify it, aiming to “put the unity back into Community”
Culturally based	Culture must underpin the foundation of the design of the Representative Body, yet it must combine tradition with modernity at the lead of the Community in a culturally safe manner because “culture is key to our business”
Transparent and accountable	The Representative Body must be accountable to and for community and to government, meaning the Representative Body does not have any hidden agendas and has to maintain its integrity

Skills based	The “best warriors (must be) at the table” through a democratic process, powered by the people. This will ensure that members of the Representative Body have the required skills, connections and resources to discharge their responsibilities
Independent	The Representative Body must be “independent of Government but not of Community”. It should seek to pursue its own agenda, and thus the agenda of Aboriginal Victorians, without the influence from other sources. This was an assumption outlined at the beginning of each consultation and participants reflected its importance throughout each forum
Clan based	The design of the Representative Body must be inclusive of all Victorian clans and people and representative of the diversity of Aboriginal clans in Victoria

7.2 Model element: purpose

The purpose of any entity is fundamental to its effectiveness. The working assumption of the Working Group that was delivered through the Community Consultation workshops was that the Representative Body’s purpose would be to facilitate the voice of Aboriginal people in Victoria in culturally safe Treaty/Treaties negotiations.

During the course of the Phase 2 Community Consultations this was clarified to mean:

- Designing and authorising a Treaty Negotiation Framework
- Supporting and enabling Treaty negotiations

There has been no challenge to the stated purpose of the Representative Body.

7.2.1 Next steps

- Use the purpose to drive and strategy and vision of the Representative Body

7.3 Model element: entity structure

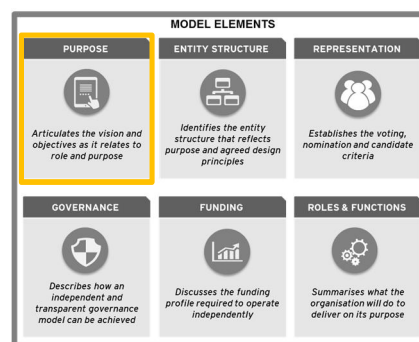
An entity structure is the legal form that the Representative Body will take, this could be a private entity like a company or a government entity like a statutory authority with many variations between. The entity structure is important in that it establishes the identity of the Community’s representative body in critical ways such as control of membership and representatives and its reporting obligations. This becomes important in the Treaty Negotiating Process because it will define how it can relate with other entities such as government (as a negotiating entity), oversight bodies (such as a Treaty Commission) and specific Aboriginal negotiating entities which may bring specific claims. These roles will all be defined in the Treaty Negotiating Framework which is the Representative Body’s primary responsibility.

Our evaluation process began by taking all possible entity legal structures and evaluating them against the Design Principles. This left three entity structures that fit best against the Design Principles (for a high-level analysis of the next three best options considered please see Appendix B of this report), they were:

- Company limited by guarantee
- ORIC corporation
- State owned company

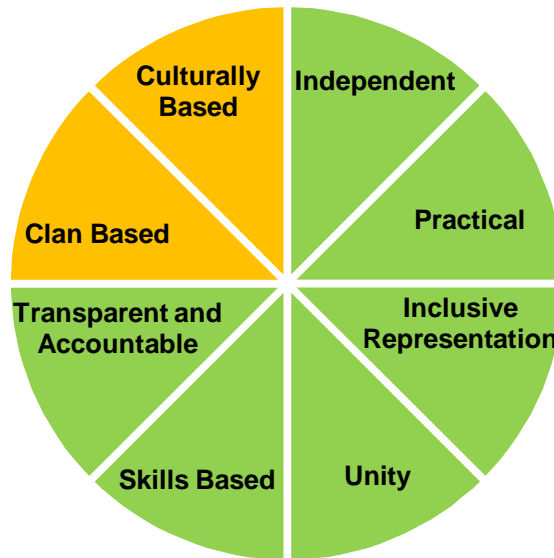
To support the analysis a rating system was devised using the definition of each Design Principle developed during the previous phase of consultations. This rating system is based on finding a poor, reasonable or good fit against the Design Principles. A good fit is shown in green, a reasonable fit in orange and a poor fit in red. The high level assessment using that rating assessment for the top three entity structures is shown below. For the detailed rating system please see Appendix B of this report.

Figure 6: Model Elements: Purpose



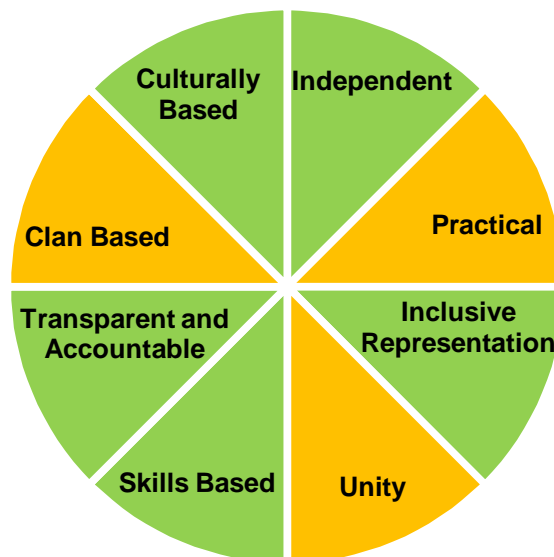
We conducted an in-depth analysis on each of the top three entity structures against the Design Principles. For the in-depth analysis of the top three entity structures, please see Appendix B. The Working Group considered the analysis of all of the top three entities in detail and after assessing the evaluation of each entity structure against the Design Principles, determined that the Company Limited by Guarantee was the best fit. This resulted in the Company Limited by Guarantee being the Working Group’s preferred entity structure. It must be noted that the entity structure is only one of the six model elements outlined above.

Figure 7: Company Limited by Guarantee Analysis

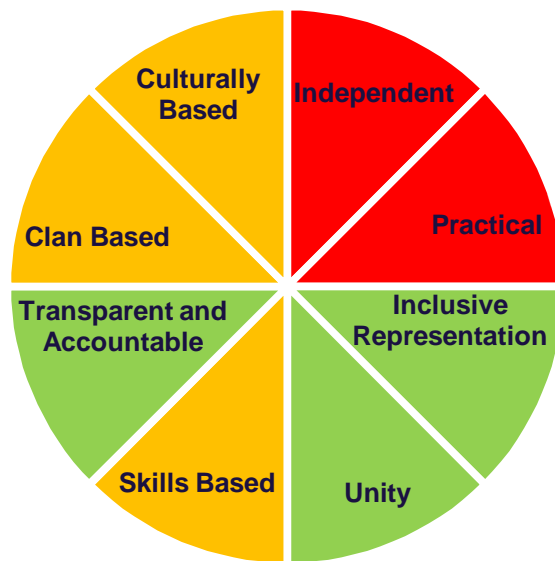


Company Limited by Guarantee
Assessment against Design Principles

Figure 8: ORIC Corporation Analysis



ORIC Corporation
Assessment against Design Principles



State Owned Company

Assessment against Design Principles

Of the three preferred models, the company limited by guarantee and the ORIC Corporation both rate highly against the Design Principles with the State owned company achieving a medium rating. One of the primary reasons for the medium rating for the State owned company is that the relevant Minister is still the ultimate shareholder of the entity limiting its independence.

Comparatively, the ORIC corporation measures strongly against the independent, inclusive representation, culturally based, transparent and skills based Design Principles. However, the ORIC Corporation is heavily regulated by ORIC – a statutory authority similar to ASIC but designed specifically for the regulation of Indigenous Corporations. The regulatory authority and control over an Indigenous Corporation that ORIC has is more extensive than that of ASIC’s powers under the Corporations Act. This limits the practicality of an Indigenous Corporation.

Finally, the Company Limited by Guarantee, much like the ORIC corporation measures strongly against the independent, practical, inclusive representation, unity, transparent and accountable and skills based Design Principles. However, comparatively to the ORIC corporation, a company limited by guarantee does match up the better to the Design Principles overall due to it being more practical which supports the principle of unifying the Aboriginal Community. That is largely due to its flexibility in the way it can be designed, established and run to accommodate appropriate cultural governance practices.

Please see below in Figure 6 a side-by-side comparison of the top three entity structures with some high level commentary that outlines the rationale for each of the ratings provided for each entity structure against each Design Principle.

Figure 10: Top Three Entity Structures High Level Assessment

		Company Limited by Guarantee <i>Overall high rating against the Design Principles</i>	ORIC Corporation <i>Overall high rating against the Design Principles</i>	State Owned Company* <i>Overall medium rating against the Design Principles</i>
Design Principles	<i>Independent</i>	<ul style="list-style-type: none"> ▶ Independent of government ▶ Governance allows for self-determination GOOD FIT	<ul style="list-style-type: none"> ▶ Independent of government ▶ Governance allows for self-determination GOOD FIT	<ul style="list-style-type: none"> ▶ Not independent of government ▶ Governance can allow for self-determination, but this may be harder to achieve POOR FIT
	<i>Practical</i>	<ul style="list-style-type: none"> ▶ Simple structure and inexpensive to run (it is designed as a not-for-profit) ▶ Less clear about who can be a member ▶ Liability is placed on members (\$50 each member) ▶ Able to be a not-for-profit with DGR status, attracting alternate funding from donations and has tax benefits GOOD FIT	<ul style="list-style-type: none"> ▶ Simple structure – however structure is prescribed by ORIC ▶ Board can be remunerated, meaning there are employment opportunities REASONABLE FIT	<ul style="list-style-type: none"> ▶ Structure less flexible as it is a government entity ▶ Reporting requirements are very costly and complex ▶ Perception from Community 'just another government body' POOR FIT
	<i>Inclusive Representation</i>	<ul style="list-style-type: none"> ▶ The constitution can be structured to be inclusive through its board, its membership and through its practices and policies GOOD FIT	<ul style="list-style-type: none"> ▶ The Rule Book can be structured to be inclusive through its board, its membership and through its practices and policies GOOD FIT	<ul style="list-style-type: none"> ▶ Constitution can be structured to be inclusive through its board, its membership and through its practices and policies. GOOD FIT
	<i>Unity</i>	<ul style="list-style-type: none"> ▶ The structure can be designed, and is flexible in its design, to provide the entire community with a voice. GOOD FIT	<ul style="list-style-type: none"> ▶ The structure can be designed, and is flexible in its design, to provide the entire community with a voice. ▶ However ORIC determines this structure REASONABLE FIT	<ul style="list-style-type: none"> ▶ The structure can be designed, and is flexible in its design, to provide the entire community with a voice. GOOD FIT
	<i>Culturally Based</i>	<ul style="list-style-type: none"> ▶ Does allow for flexibility in its processes and policies to be culturally based and culturally safe ▶ Does not have specific provisions to give regard to cultural circumstances REASONABLE FIT	<ul style="list-style-type: none"> ▶ The structure and Rule Book can accommodate cultural leadership, authority and perspectives through greater flexibility to design their rules with regard to their traditions and circumstances. GOOD FIT	<ul style="list-style-type: none"> ▶ May be limited in flexibility of processes being based on culture and tradition, and respecting culturally safe practices fully, as it relies on legislation being culturally appropriate. Legislation may be changed to adapt. REASONABLE FIT

	Company Limited by Guarantee <i>Overall high rating against the Design Principles</i>	ORIC Corporation <i>Overall high rating against the Design Principles</i>	State Owned Company* <i>Overall medium rating against the Design Principles</i>
Transparent and Accountable	<ul style="list-style-type: none"> ▶ Medium reporting requirements ▶ Reporting requirements are based on the Corporations Act and with large revenues must have an auditor. GOOD FIT	<ul style="list-style-type: none"> ▶ Heavy reporting requirements ▶ Reasonably high level of transparency through ORIC GOOD FIT	<ul style="list-style-type: none"> ▶ The reporting requirements are very costly and complex, however, this means the entity is very transparent and accountable GOOD FIT
Skills Based	<ul style="list-style-type: none"> ▶ Structure requires skills based leaders to run the body GOOD FIT	<ul style="list-style-type: none"> ▶ Structure requires skills based leaders to run the body GOOD FIT	<ul style="list-style-type: none"> ▶ Skills can be legislated as a requirement, but are not inherently required in eligibility REASONABLE FIT
Clan based	<ul style="list-style-type: none"> ▶ This can be respected through a regional structure. However, it is not possible to have a regional entity representing every single clan as that would make the representative structure impractical. REASONABLE FIT	<ul style="list-style-type: none"> ▶ This can be respected through a regional structure. However, it could prove difficult to have a regional entity representing every single clan as that would make the representative structure impractical. REASONABLE FIT	<ul style="list-style-type: none"> ▶ This can be respected through a regional structure. However, it is not possible to have a regional entity representing every single clan as that would make the representative structure impractical. REASONABLE FIT

Ultimately, a Company Limited by Guarantee is the entity structure that best aligns with the Design Principles. It aligns strongly with the clear message from our consultation that the Representative Body needs to be independent, practical and inclusive and importantly allows for cultural elements to be designed into the entity.

For the in-depth analysis of each of the top three entity structures and a high level analysis for the next best three entity structures, please see Appendix B of this report.

7.3.1 Next steps

- Finalise the preferred entity structure of the Representative Body.

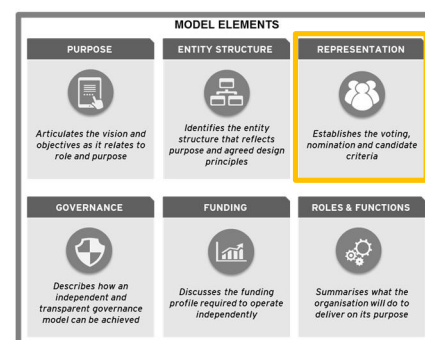
7.4 Model element: representation

Representation was the central focus of the Phase 2 Community Consultations. Given this entity will be a Representative Body it is critical that the design process considers carefully *how* people are represented and *who* has a voice.

In support of this eight (8) questions were asked to explore three primary components of representation (please see Section 3.1 of this report for the eight questions):

1. Candidacy: who can be chosen as candidates and how
2. Electorates: how people are nominated to be on the representative body (voting boundaries)
3. Voting: who can vote and how is voting organised.

Figure 11: Model Elements: Representation



Over 300 responses were provided either face to face, via the online message stick or via post as a direct result of the Face to Face Community Consultations and Treaty Circles. The answers provided to these questions were collated and are presented below.

In addition to the quantitative summary, we have collated the comments and ideas shared in the responses in Appendix C. One of those responses reminds us why representation is so important:

A Treaty does not belong to an organisation it belongs to all of us.” (Portland)

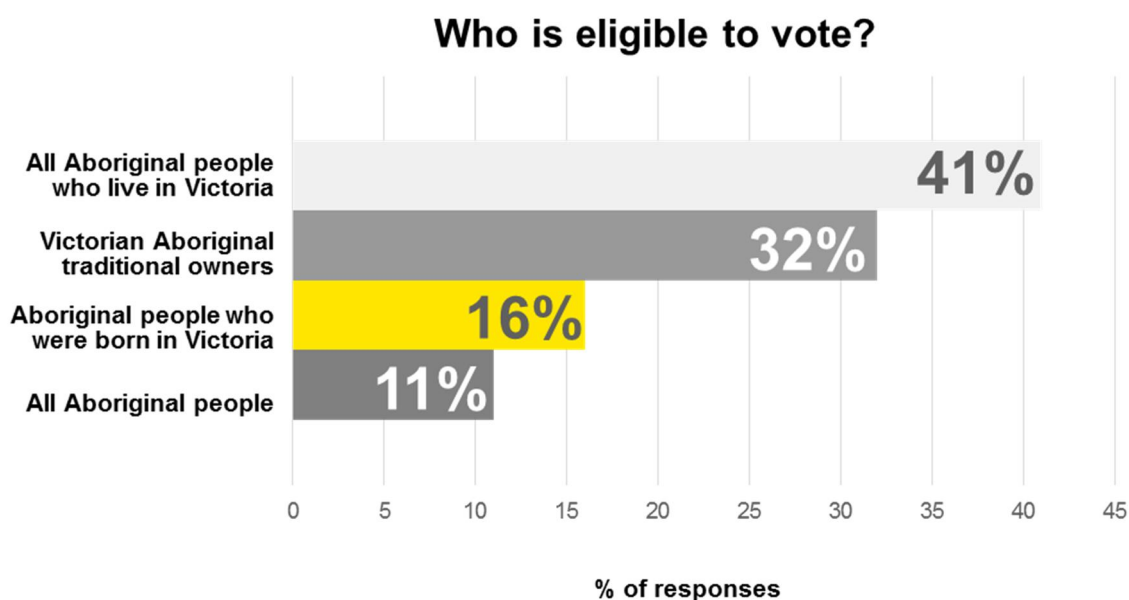
Question 1: Who is eligible to vote?

The top response (40%) to this question was ‘all Aboriginal people who live in Victoria’, this means that any Aboriginal person who resides in Victoria no matter where their mob originates from can vote. For example, a Palawa woman living in Melbourne would be eligible to vote. The second most popular response was Victorian traditional owners. 15% of responses agreed that if an Aboriginal person was born in Victoria, but living anywhere then they are eligible to vote. Finally, 11% of responses outlined that all Aboriginal people are eligible to vote not matter where their mob is from or where they live.

Given the Design Principle of Inclusive Representation and the responses to the question, the data suggests that all Aboriginal people who live in Victoria should be eligible to vote. This provides every Aboriginal person living in Victoria with a voice and the Representative Body with an electorate of approximately 29,000-37,000 voters¹. There was a combined response of 66% who took an inclusive approach to voting eligibility reinforcing this position.

Additionally, it is in line with the foundational principle outlined at the beginning of the questionnaire, that the Representative Body would be an independent voice for Aboriginal people living in Victoria. Comments (see Appendix C) provided by participants in the Phase 2 Community Consultations support this position with participants outlining that all Aboriginal people living in Victoria need to have a voice regardless of where they are from.

Figure 12: Who is eligible to vote graph



Question 2: Who can stand for election?

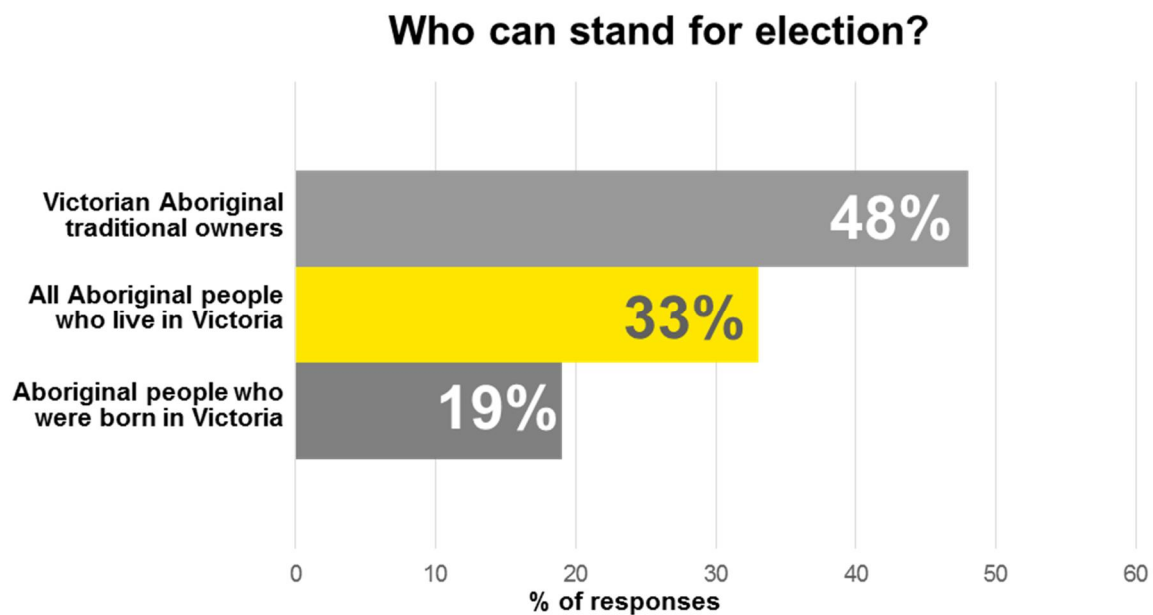
A clear majority of respondents believed that only Victorian Aboriginal traditional owners, whether they are recognised by the Government or not, should be able to stand for election and become the

¹ National Aboriginal and Torres Strait Islander Survey 2014-15: Summary of Results for States and Territories, Australian Bureau of Statistics, www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4714.02014-15?OpenDocument, accessed 10 May 2017

elected representatives. This is in line with the sentiments we heard across the State during both phases of consultations and with the foundation principle outlined at the beginning of the questionnaire – that only traditional owners can negotiate local Treaties for their country, supported by a State-wide Treaty negotiation framework (see Appendix C for comments). However, this was qualified further by some participants who outlined that whilst traditional owners can only speak for Country, others may speak for other issues and that treaties must be for traditional owners first and a suite of rights to follow that include the entire Aboriginal Community.

There was also strong support for all Aboriginal people living in Victoria being able to stand for election, with some suggesting that if there are high caliber candidates who are not traditional owners then they could also be considered as candidates as long as traditional owners were also represented. However, overall the results for this question provides clear direction as to who can stand as a representative of the Representative Body once it is established – and that was for representatives to be traditional owners only.

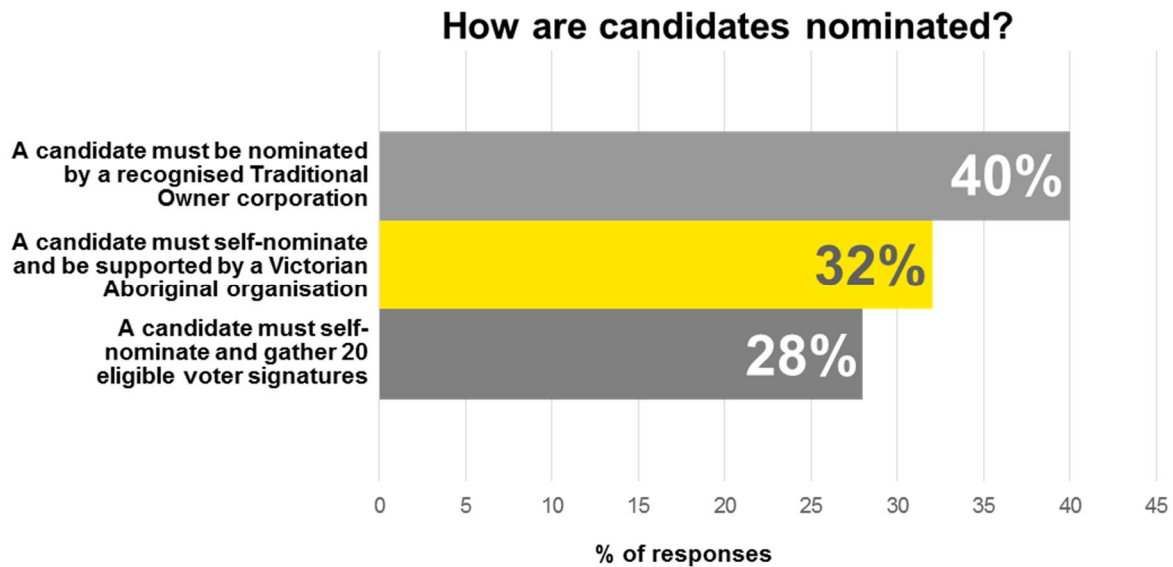
Figure 13: Who can stand for election graph



Question 3: How are candidates nominated?

To become a candidate for election it is common to have a nomination process to demonstrate that a person has initial support for their candidacy and to ensure candidates are serious about their intention. This question sought to provide clarity on how people are nominated to become candidates. The norm in Australian politics is for candidates to receive support from the electorate in the form of signatures. The majority of responses felt that of candidates should be nominated by a Traditional Owner corporation. However, given the relatively strong support for all three options, further consultation is suggested to decide not only how candidates might be nominated but also what the shape of a culturally appropriate process for nomination would look like.

Figure 14: How are candidates nominated graph



Question 4: What should disqualify someone from being a candidate?

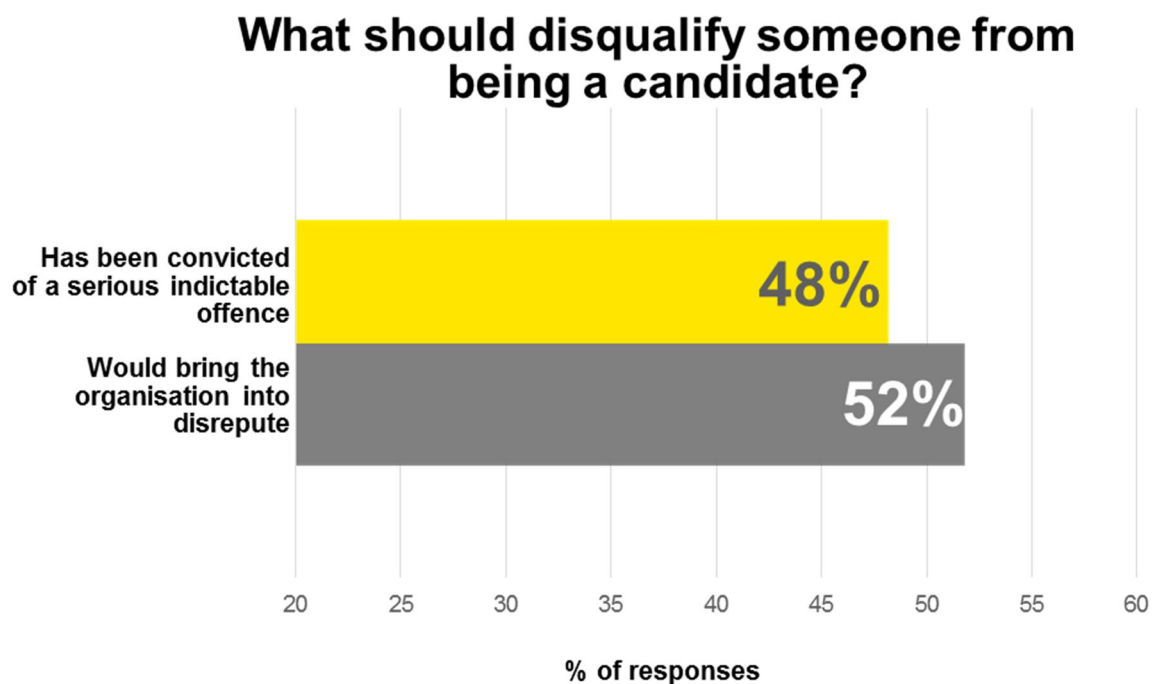
The purpose of this question was to seek input on the behaviours and conduct required of people who wish to represent the community. Each of the proposed criteria was supported by approximately 50% of respondents suggesting that both criteria would act as disqualifiers for any potential candidates. These disqualifiers are:

- Someone who has been convicted of a serious indictable offence. These are offences that include and are similar to aggravated burglary, sexual assault, drug trafficking offences, murder and manslaughter
- Someone who would bring the organisation into disrepute, which is conduct that is illegal or generally immoral in the eyes of the community would be considered conduct that could bring the organisation into disrepute

It was suggested during the Face to Face Community Consultations that an Ethics Council be established as part of this process to make judgements on these criteria (see Appendix C). This is an idea that will be taken to the Aboriginal Community to be discussed further. This question often raised important discussions about the high rates of incarceration experienced by Aboriginal people and the importance of designing the Representative Body to allow for people who may have a criminal record to still participate if their offence was not a serious indictable offence, or they may have turned their lives around – or equally important, may simply have been the subject of discrimination. This is another reminder of the importance of a unique design for the Representative Body that reflects the experience of Aboriginal people in Victoria.

Finally, as one participant in Sale commented, a candidate cannot be “too deadly”.

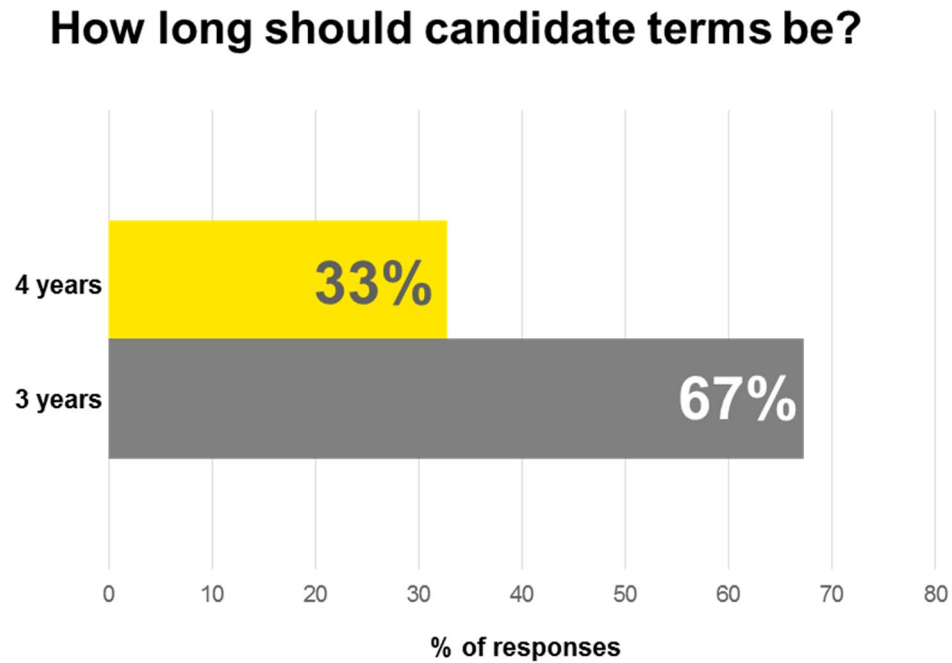
Figure 15: What should disqualify someone from being a candidate graph



Question 5: How long should candidate terms be?

The responses to this question were overwhelmingly in favour of a 3 year candidate term. There were also discussions had around the initial representatives and how they may need to be staggered so that there is continuity of representation rather than a complete turnover of representatives at each election. A number of participants suggested that a 50% refresh of representatives every 1.5 years could be beneficial for the Representative Body (see Appendix C).

Figure 16: How long should candidate terms be graph



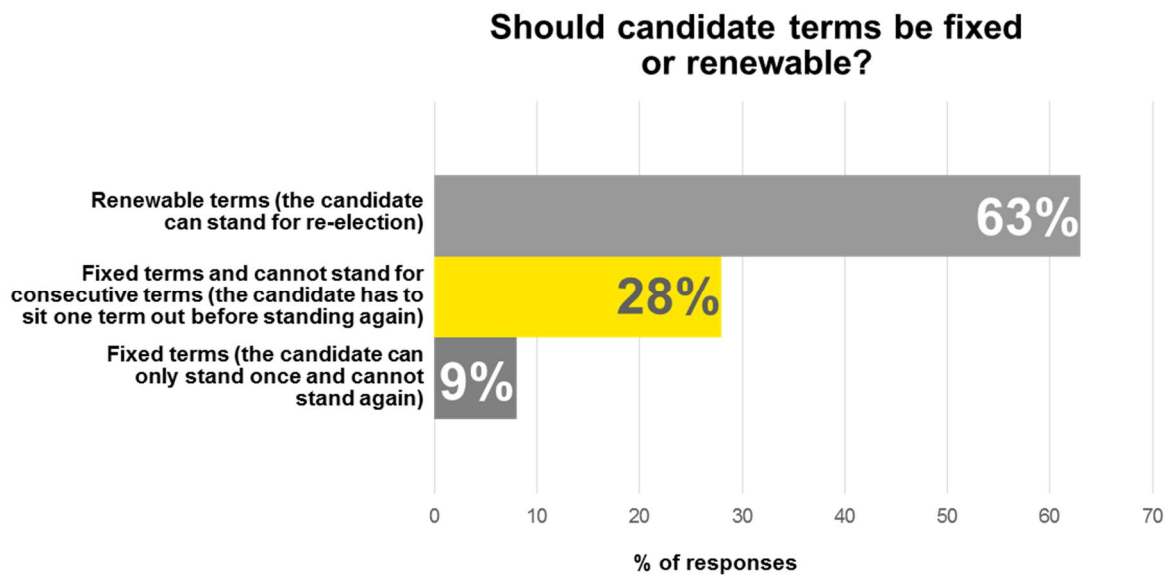
Question 6: Should candidate terms be fixed or renewable?

Much like the previous question, there was a clear answer provided by the participants of the Face to Face Community Consultations and Treaty Circles that candidate terms should be renewable. This means that as long as a representative is doing a good job they can be continually voted back in by the Aboriginal Community. During the Face to Face Community Consultations participants also noted that while renewable terms were a positive approach, there may be a need for a limit to the number of terms a member can serve (see Appendix C). However, how many terms this might be was not discussed.

This question highlights the potential to view the Representative Body as either an organisation that adopts corporate governance standards in its structures, or whether this reflects a parliamentary structure. The way the Representative Body is viewed may have a bearing on the way in which voting and representative structures are designed.

There have also been consistent comments through the both phases of consultation calling for dedicated parliamentary seats for Aboriginal representatives in the State Parliament, which if realised may help to distinguish the role of a Representative Body.

Figure 17: Should candidate terms be fixed or renewable graph



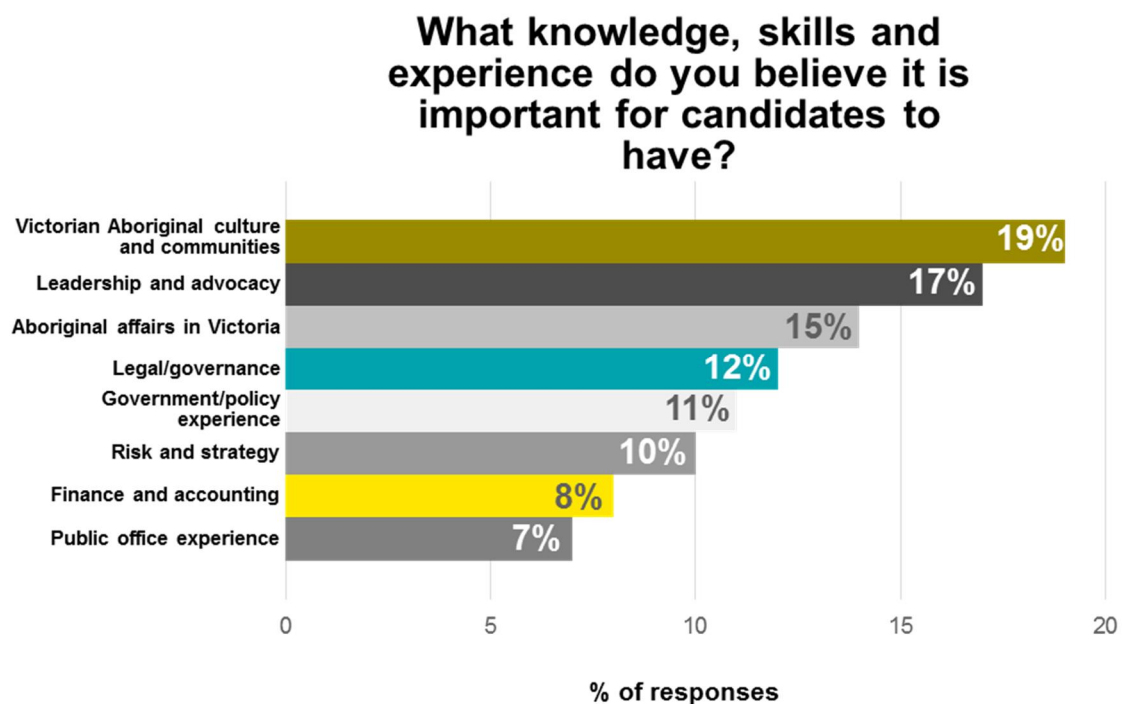
Question 7: What knowledge, skills and experience do you believe it is important for candidates to have?

One of the Design Principles that came out of the previous phase of consultations was a desire for the Representative Body to be 'skills based'. In this round of consultation we sought clarification on what skills, knowledge and experience was important for representatives to possess. The results suggest that candidates must be proven leaders and have experience in Victorian Aboriginal communities and their cultures. However, the percentage of responses for the other skills and criteria suggested that candidates should possess at least one or more of these criteria if they are to be considered. This was coupled with many comments throughout the Phase 2 Community Consultations that candidates should have at least two of the criteria outlined below to be able to stand to be a representative.

“Baseline skills required for all candidates then at least one of the identified skills.” Mildura

These criteria could also usefully form part of the nomination process by asking potential candidates to identify the knowledge, skills and experience they bring to the role.

Figure 18: Knowledge, skills and experience graph



Question 8: What voting structure (electorates) do you want for the Representative Body?

This question focused on determining on how the Aboriginal Community wanted the State to be split into electorates. Three options were provided as well as an 'other' option which took the form of a map of Victoria asking respondents to draw their preferred boundaries. The 5 region option and the Statewide (or no boundary) option received the greatest endorsement, with the 3 region option making up only 7% of responses. The opportunity to describe other options did not receive relevant options for electoral boundaries.

This was a question that raised a lot of discussion during the Face to Face Community Consultations, in particular in locations along Dhungala (the Murray River), such as Echuca, Mildura and Wodonga.

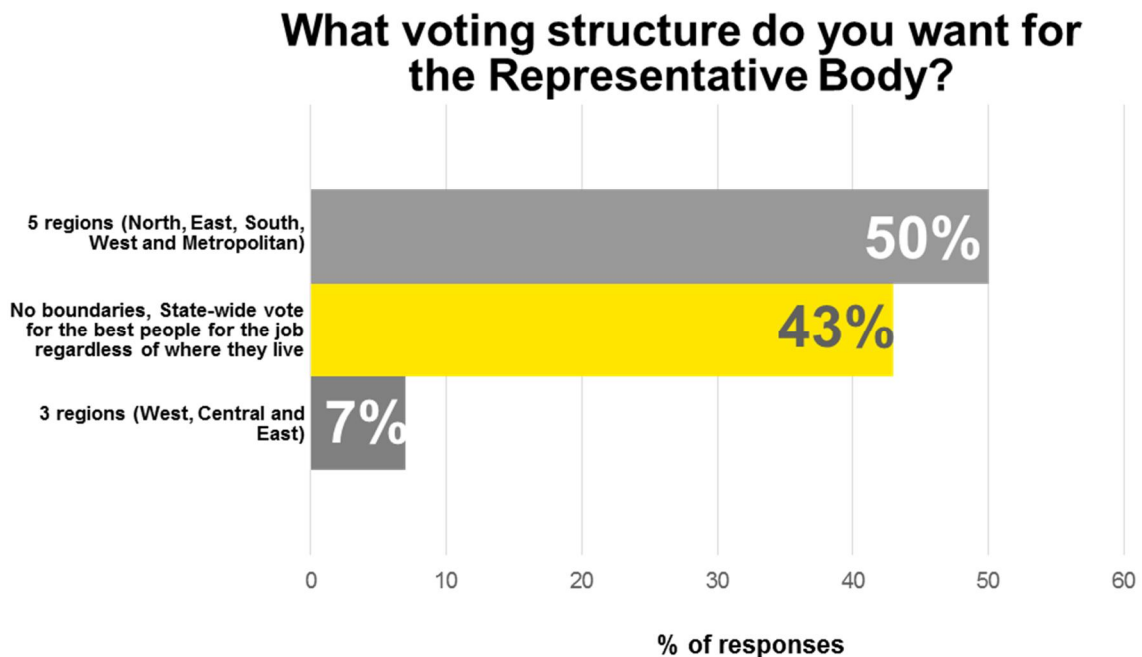
“If my uncle lives across the river in NSW but uses Victorian services and considers themselves a Victorian or to associate/identify with Victoria more – then this may exclude them.”

Participants in these locations (and occasionally in other forums) raised issues around cultural boundaries compared to the colonial boundaries that form the Victorian State borders. Participants called out the fact that Aboriginal people who live along the border have traditional boundaries that cross the current borders and that people who are part of those Nations but don't necessarily live in Victoria should be able to have their say too. Additionally, participants also outlined that traditional boundaries should be enforced and that all mobs should have a voice (see Appendix C), however, how this is to be achieved was not outlined. Due to this complexity and because both the 5 region and Statewide options are so close in their percentage of responses, culturally appropriate electoral boundaries will need to be discussed during the next phase of consultations.

Or as a participant in Mildura put it:

“You have to look at traditional boundaries because they blow white Australia's boundaries out of the water.”

Figure 19: Voting structure graphs



7.4.1 Next steps

- Finalise the candidate nomination process and the electoral boundaries.

7.5 Model element: governance

At the State-wide forum on 28 April 2017 the Working Group re-emphasised the importance of culturally appropriate governance in the implementation of an effective and culturally safe Representative Body.

Governance is fundamentally about how entities are controlled and decisions are made. Given how important it is that this process reflects the principle of self-determination, it is essential that the design principles defined and agreed by Community are used to establish how the Representative Body will be governed.

In this way the voice of Aboriginal people through their design principles will directly shape how the Representative Body:

- Sets direction
- Makes decisions
- Demonstrates and monitors accountability
- Manages risk
- Monitors and influences behaviour and culture.

In addition to this, the detailed design of the Representative Body will also begin to consider how its role interacts with the legislative process to establish a Treaty Negotiating Framework.

7.5.1 Next steps

- Confirm culturally appropriate ways of informing, authorising and implementing decision making processes that can be applied in a Representative Body.

7.6 Model element: funding

On Friday 28 April 2017, the Hon. Minister for Aboriginal Affairs, Natalie Hutchins, announced that \$28 million dollars will be granted towards forwarding Aboriginal self-determination in Victoria. Of that amount over \$16 million would be allocated towards Treaty and the funding of the development of a Representative Body.

As stated in our previous report, the funding of a Representative Body is critical to its ability to be independent and permanent – two major working assumptions of the Working Group about a Representative Body.

The funding and investment in the Representative Body will need to continue beyond the recent budget announcement to ensure that the Representative Body is able to achieve its purpose and role and be a true voice for the Aboriginal Community for years to come. Ultimately the final structure and functions of a Representative Body will have a bearing on the investment required to establish and sustain the entity.

Given the creation of a sustainable economic base for the Representative Body is out of the hands of the Aboriginal Community, no discussion during any workshops or any parts of the Phase 1 or 2 Community Consultations covered the investment required for the Representative Body to be genuinely sustainable.

Figure 20: Model Elements: Governance

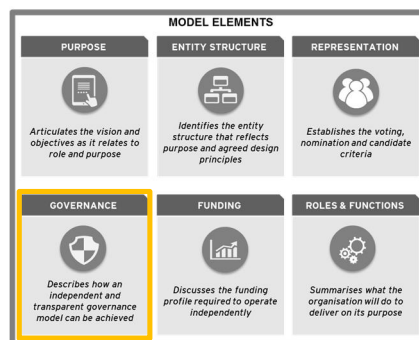
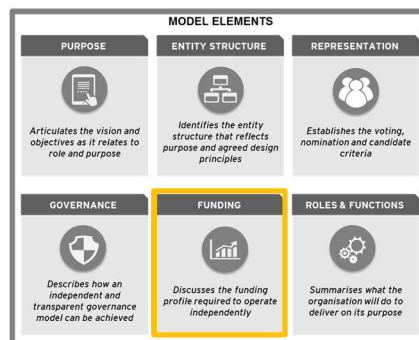


Figure 21: Model Elements: Entity Structure



7.6.1 Next steps:

- Establish an effective and appropriate long term funding mechanism for a Representative Body given its final roles and functions.

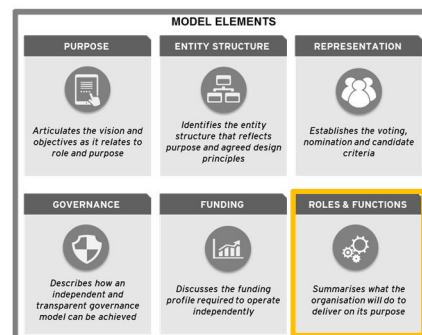
7.7 Model element: roles and function

During the Phase 1 Community Consultations participants discussed the roles and functions of a Representative Body.

These discussions were distilled into one of the underlying principles outlined to participants during the Phase 2 Community Consultations describing the role of the Representative Body as being:

...to represent, advocate, educate, develop a State-wide Treaty negotiation framework and engage with community and government about Treaty/Treaties.

Figure 22: Model Elements: Roles and Functions



And as the Working Group noted in the Open Letter to community, “the overarching principle was that the representative structure is to authorise treaty/treaties”. (See Appendix H)

The functions required to deliver on the above mentioned role will need to be designed and costed out. This will help to define what the Representative Body will actually do and how much funding and resources it will need to sustain itself. Part of this can be done prior to the establishment of the Representative Body. As part of this design process, the Representative Body will need to be able to make decisions itself on how it carries out its role via its functions with a certain amount of flexibility built into its design to allow it to adapt and evolve as it is required.

We envisage that this next iteration of design will occur over June through to August 2017, with a specific focus being on the design of a function aimed at developing a State-wide Treaty negotiation framework. This is the first step for the Representative Body, as this will ensure that any Treaty negotiations can start as soon as possible.

7.7.1 Next steps

- Document the functions a Representative Body requires to carry out its purpose to support the elected members to finalise the functional structure of the Representative Body.

7.8 Options and further consultation

As noted earlier, the representation and governance model elements require further detailed design to apply the technical and legislative expertise to the establishment of a formal and permanent Representative Body that can represent Aboriginal people in Victoria.

The Working Group has proposed another round of consultations to work through these final elements. This will take the shape of a Community Assembly, which will be made up of a diverse group of Aboriginal community members from across the State selected through an expression of interest process open for all Aboriginal Victorians to apply. The Working Group has adapted the Community Assembly from the successful citizen’s jury adopted by the Greater Geelong City Council. The idea is for the Community Assembly to deliver a consultation approach that creates a balance between experts and the Aboriginal Community, supporting good public judgement provided by the Aboriginal Community as input into effective decision making. Enabling the Aboriginal Community to be fully informed before putting forward its views and ideas on the final design pieces of the Representative Body.

The Community Assembly will run across the second half of 2017 and will focus on the remaining design elements of the Representative Body.

The outstanding questions and issues for each of the remaining elements are:

- **Representation:**
 - How are candidates nominated?
 - How do candidates demonstrate their ability to commit to the highest standards of culturally appropriate governance?
 - How is the voting structure of the Representative Body set up?
- **Governance:**
 - How will the decision making powers and responsibilities of a Representative Body and its members be defined to reflect culturally relevant systems and processes?

7.8.1 Conclusion

The contributions and insights shared by hundreds of members of the Aboriginal Community have been nothing short of remarkable.

The commitment and dedication of the Working Group in volunteering their time and wisdom has been a privilege to observe first hand, and as they made clear throughout, this is a journey that must have Aboriginal people, their communities, clans and culture at the heart of the process.

It cannot be put better than this:

***“May our journey be one that
is respectful of all Aboriginal
people and their clan
groups”***

Wodonga 2017

Appendix A Background and context

This information provides further background to this report and was drawn from the December 2016 report on consultations with the Aboriginal Community.

Context

In March 2015, the Premier of Victoria, The Honourable Daniel Andrews, during his *Closing the Gap* address at Parliament House committed that the Government's approach to Aboriginal Affairs would be guided by the principle of self-determination. In September 2015 the government, as a symbolic gesture, made a decision to permanently fly the Aboriginal flag at Parliament House.

Subsequently, following an Aboriginal Community Forum held in Melbourne in February 2016 to discuss self-determination and constitutional recognition, at the request of the Aboriginal community participants, the State Government made a commitment to the Aboriginal Community to enter into discussions about a Treaty/Treaties.

In order to further this agenda, an Aboriginal Victoria Forum was convened in May 2016 (the May Forum) to discuss Treaty and the next steps. The Aboriginal Community's views expressed at the May Forum, were that Treaty is a fundamental element of self-determination. The Premier committed to further conversations about a Treaty including: what it might look like, what it might achieve and what it needs to acknowledge. Consequently, there was broad agreement to progress Treaty discussions, including resourcing community led conversations on representative structures.

An action arising out of the May Forum was to establish the Working Group which was established following a public expression of interest process and held its first meeting in July 2016 (see section 3 of this report for further detail).

The Working Group commenced its substantive work in late July by participating in a two day workshop about representative structures and models. A number of external experts and academics participated in this workshop. On 10 August 2016 the Working Group met to discuss budget and the proposed strategy and plan for undertaking consultations. On 26 August 2016 the Working Group agreed its final strategy, plan and approach to undertaking consultations and so set up a sub-committee to work intensively to consider content for consultations. On 14 September 2016 the Working Group selected its preferred consultant to assist them in conducting ten (10) community consultations across the State as part of the Phase 1 Community Consultations. The Working Group considered the sub-committee's work on content and agreed its consultations would need to consider this material as part of their brief.

The Working Group and Aboriginal Victoria engaged Ernst and Young (EY) and Richard Frankland to help develop and facilitate the Phase 1 Community Consultations. This continued into Phase 2 Community Consultations across February through to April 2017 consisting of 6 community consultations and a consultation strategy focussed on having the community lead the discussion in treaty circles. The result of EY's engagement as part of the Phase 2 Community Consultations outlined in this report. Discussed are the themes, observations and recommendations from the Phase

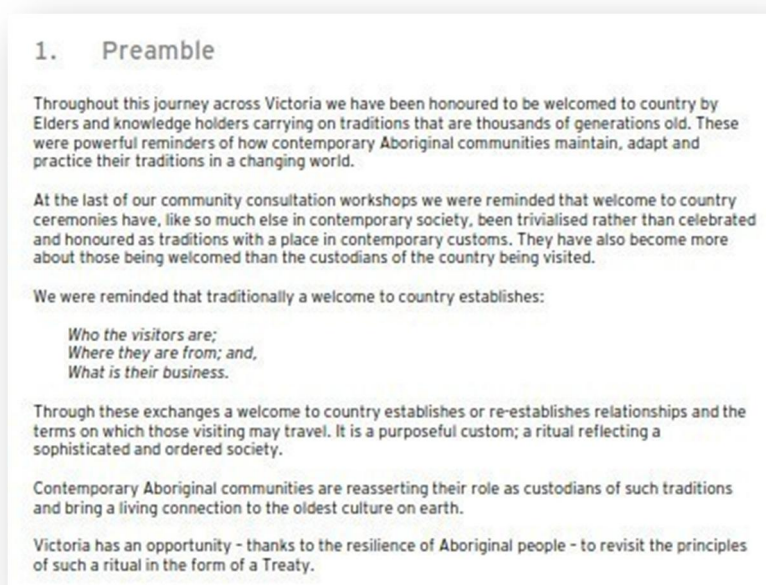


Figure 23: Preamble to the December 2016 Report

2 Community Consultations. This report is intended to support the Working Group to report back to the Aboriginal Community on 28 April 2017. A summary of this forum is provided in Appendix H of this report and was prepared and added to this report after the completion of this report.

Setting up a representative body

It has been argued that “since the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC), there has been a significant and noticeable gap in broad national Indigenous policy advice and critique of government activity in Indigenous affairs. Rather, policy critique has been uncoordinated and disparate between various Indigenous organisations. This has weakened the position of Indigenous peoples in general²”.

The United Nations Declaration in the Rights of Indigenous People asserts that “Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions³.”

The establishment of a Representative Body seeks to fill this gap and “enable an Indigenous-controlled institution... to operate in an equally accountable partnership with government.”⁴

As the Phase 1 and Phase 2 Community Consultations progressed there was debate about whether the Representative Body should only negotiate Treaty and be referred to as a “Treaty Assembly”. However, feedback from the Aboriginal Community throughout the Community Consultations showed that the Representative Body could be more than just an entity that negotiates Treaty, rather, it could be a true representative voice for the Aboriginal Community that advocates and negotiates for and on behalf of, unites and represents the Aboriginal Community. As a result, throughout this report we use the term Representative Body not as a working title but as a descriptive term so as not to pre-empt what the Representative Body can or cannot do.

Through this process it was our aim to listen, understand and faithfully record the Aboriginal Community’s voice and perspectives. During the Phase 2 Community Consultations we sought to hear the Aboriginal Community’s voice on representation. This is one of the six model elements required to design the Representative Body.

² Goodwin, Tim, “A New Partnership Based on Justice and Equity: A Legislative Structure for National Indigenous Representative Body” in *Journal of Indigenous Policy*, issue 10, ed. Larissa Behrendt and Mark McMillan, March 2008.

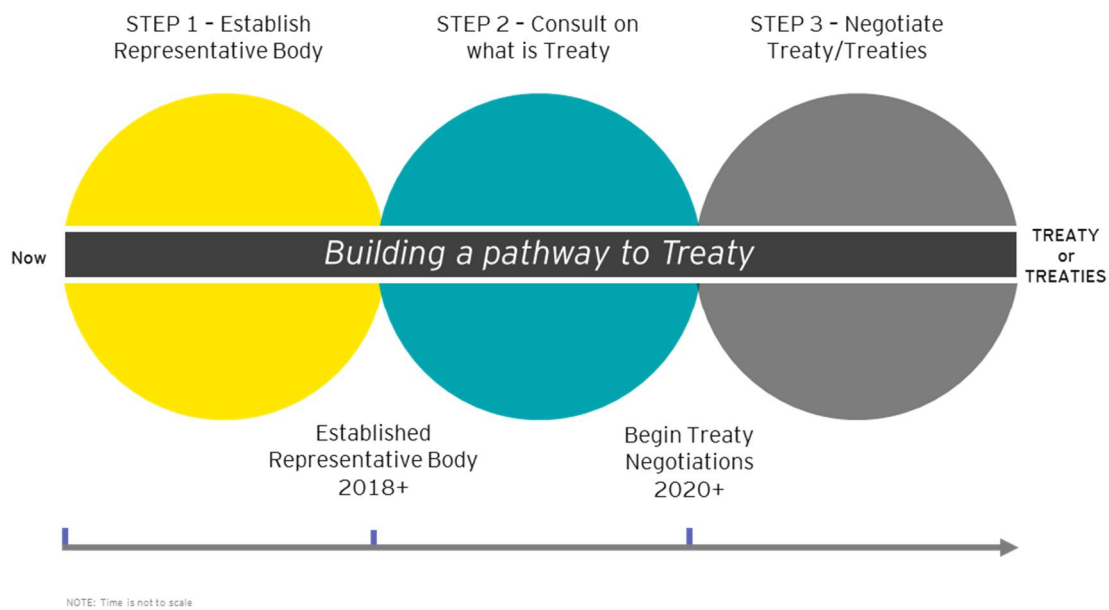
³ United Nations Declaration in the Rights of Indigenous People, Article 18.

⁴ Governing ‘On Country’: using institutions to close the gap in Indigenous disadvantage. Jay Tilley. *AltLJ* Vol 36:1 2011. p.37.

A pathway to treaty/treaties

The establishment of a Representative Body is a critical first step of the Treaty process that the State Government has committed itself to. Following its establishment the Representative Body will need to consult with the Aboriginal Community as to what Treaty actually means to the community and what the optimal form of the Treaty/Treaties should take. This will then allow for the final stage of the process, which will be the negotiation of Treaty/Treaties with the State Government. This entire process is outlined in the figure below.

Figure 24: The Pathway to Treaty



The Phase 2 Community Consultations that ran from Tuesday 7 March 2018 until Friday 21 April 2017 form the basis of this report and will be a stepping stone into further consultation with the Aboriginal Community later in 2017.

Appendix B Entity design analysis

On the following pages a detailed analysis of each of the top three entity structures is provided. A discussion is provided on how the rating for each was achieved as well as an overview of the rating system devised using the Design Principles. As outlined earlier in this report, the top three structures are the structures that match up best against the Design Principles.

Entity design rating system

Below is the rating system devised to find a poor, reasonable or good fit for each model element when assessed against the Design Principles. A definition is provided for each Design Principle and what a poor, reasonable or good fit looks like.

Figure 25: Entity Design Rating System

		Poor fit	Reasonable fit	Good fit
Design Principles	<p>Independent</p> <p>The Representative Body must be "independent of Government but not of Community". It should seek to pursue its own agenda, and thus the agenda of Aboriginal Victorians, without the influence from other sources</p>	<ul style="list-style-type: none"> ▶ Not independent of government ▶ Decision making and governance does not fulfil self-determination, as it is largely influenced or directed by government 	<ul style="list-style-type: none"> ▶ Some independence from government ▶ Self-determination is maintained for the majority of governance and decision-making, however some is subject to the influence of other sources, for example, a regulator 	<ul style="list-style-type: none"> ▶ Independent of government, and not independent of community ▶ Maintains the principle of self-determination, through pursuing own agenda without the influence of other sources
	<p>Practical</p> <p>Building and design of the Representative Body should be practical in that it is easily accessible for all members of the Community, well-resourced and builds upon existing frameworks and guidelines in place : "not trying to reinvent the wheel"</p>	<ul style="list-style-type: none"> ▶ Not accessible to all community members ▶ Resourcing not clear or well structured ▶ Overlaps with existing frameworks in place, or does not utilise existing frameworks/entities 	<ul style="list-style-type: none"> ▶ Accessible for most community members ▶ Resourcing may be difficult ▶ Does not overlap with existing frameworks in place, but does not take full advantage of existing frameworks 	<ul style="list-style-type: none"> ▶ Accessible for all community members ▶ Well resourced – i.e. enough FTE and funding to drive action ▶ Builds on existing frameworks in place
	<p>Inclusive representation</p> <p>The Representative Body must be "inclusive of all black fellas in the State". This extends to all Aboriginal people living in Victoria including but not limited to Traditional Owners, Stolen Generation, all ages, all genders, LGBTI, Aboriginal people who are living off country in Victoria and members of families who have territory that crosses State borders</p>	<ul style="list-style-type: none"> ▶ Not inclusive of all Aboriginal people living in Victoria. This may be reflected in voting eligibility limited to certain groups, for example, Traditional Owners only and actively excludes everyone else 	<ul style="list-style-type: none"> ▶ Inclusive of most Aboriginal people living in Victoria. Voting eligibility may be slightly limited to exclude certain groups, for example, Aboriginal people living off country in Victoria, e.g. a Palawa woman living in Victoria 	<ul style="list-style-type: none"> ▶ Inclusive of all Aboriginal people living in Victoria, including but not limited to Traditional Owners, Stolen Generation, all ages, all genders, LGBTI, Aboriginal people living off country in Victoria and members of families who have territory that crosses State borders. This includes voting eligibility and representation

Design Principles

	Poor fit	Reasonable fit	Good fit
<p>Unity</p> <p>Community outlined the necessity of one cohesive voice, "we are one mob". This should be composed of all aspects of the Victorian Aboriginal community. This would ensure that there is equal representation that embraces the diversity of the Community to unify it, aiming to 'put the unity back into Community'</p>	<ul style="list-style-type: none"> Does not present one clear voice. May allow certain members to have a louder voice than others, may divide the State, or may have unequal representation across the State 	<ul style="list-style-type: none"> Accounts for the voice of most of the State – with some potential for community to lack unity, through certain voices not able to be heard, or a complex split of the State which segregates instead of unifying 	<ul style="list-style-type: none"> Presents one clear, unified voice from its members, as facilitated by adequate representation of all Victorian Aboriginals
<p>Culturally based</p> <p>Culture must underpin the foundation of the design of the Representative Body, yet it must combine tradition with modernity at the lead of the Community in a culturally safe manner because "culture is key to our business"</p>	<ul style="list-style-type: none"> Not sufficiently culturally based – i.e. does not have culturally safe processes, or policies are not flexible to incorporate culturally significant components 	<ul style="list-style-type: none"> Some ability to ensure processes and functions are culturally based and culturally safe 	<ul style="list-style-type: none"> Effectively able to combine tradition with modernity in culture and reflect contemporary culture and representation Culturally safe for members and leaders All practices reinforce cultural safety – through voting, eligibility and decision making governance
<p>Transparent and accountable</p> <p>The Representative Body must be accountable to and for community and to government, meaning the Representative Body does not have any hidden agendas and has to maintain its integrity</p>	<ul style="list-style-type: none"> Not accountable to community, but full accountability to government Reporting standards are low, or are not transparent and accessible to community 	<ul style="list-style-type: none"> Some accountability to community and some accountability to government Reporting standards are adequate and allow for some transparency to community 	<ul style="list-style-type: none"> Accountable to and for community and also to government Actions and processes are transparent and visible to community and to government Reporting standards are high and transparent

Design Principles

		Poor fit	Reasonable fit	Good fit
<p>Skills based</p> <p>The “best warriors (must be) at the table” through a democratic process, powered by the people. This will ensure that members of the Representative Body have the required skills, connections and resources to discharge their responsibilities</p>		<ul style="list-style-type: none"> ▶ Eligibility for election is not based on the skills of candidates, and instead individuals may be appointed through other criteria – for example, popularity amongst community 	<ul style="list-style-type: none"> ▶ Eligibility for election includes some positions for skills based appointments – whereby only a portion of members are appointed based on skills, connections and resources 	<ul style="list-style-type: none"> ▶ Eligibility for election is based on skills, connections and resources, allowing “the best warriors” to be at the table
	<p>Clan based</p> <p>The design of the Representative Body must be inclusive of all Victorian clans and people and representative of the diversity of Aboriginal clans in Victoria</p>	<ul style="list-style-type: none"> ▶ Not a clan-based structure, and does not allow for adequate representation of Victorian Aboriginal clans 	<ul style="list-style-type: none"> ▶ Inclusive of Victorian Aboriginal clans, however does not fully account for sufficient voice and representation across each clan, i.e. the electoral boundaries are simple and do not account for the diversity of Victorian Aboriginal clans 	<ul style="list-style-type: none"> ▶ Inclusive of all Victorian clans and people, and is representative of the diversity of Aboriginal clans ▶ Electoral boundaries are inclusive of all Victorian Aboriginal clans and provide sufficient representation and voice for each clan

Company limited by guarantee analysis

The below diagram shows the assessment of each model element against each Design Principle in relation to a company limited by guarantee (CLG).

Figure 26: Company Limited by Guarantee Analysis

		Design Principles							
		Independent	Practical	Inclusive Representation	Unity	Culturally Based	Transparent and Accountable	Skills Based	Clan Based
Model Elements	Purpose	Good fit	Good fit	Good fit	Good fit	Poor fit	Good fit	Good fit	Poor fit
	Entity Structure	Good fit	Good fit	Good fit	Good fit	Good fit	Good fit	Good fit	Poor fit
	Representation	Good fit	TBC/NA	Good fit	Good fit	TBC/NA	Good fit	TBC/NA	Poor fit
	Governance	Good fit	Poor fit	Good fit	Good fit	Poor fit	Poor fit	Good fit	Poor fit
	Funding	TBC/NA	TBC/NA	TBC/NA	TBC/NA	TBC/NA	TBC/NA	TBC/NA	TBC/NA
	Roles and Functions	Good fit	Good fit	Good fit	Good fit	Good fit	Good fit	Good fit	Poor fit

Key

 Good fit	 Reasonable Fit	 Poor fit	 TBC/NA
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The detail for each rating is outlined as follows:

- Independent**
 A green rating is achieved for independence overall as a CLG is independent of government, which allows it to fulfil its purpose of providing an independent voice for the Aboriginal community through the direct election of representatives asserting the principle of self-determination.
- Practical**
 A green rating has been achieved for the practicality of a CLG. This is because it is a simple legal structure that is inexpensive to establish and in turn if the Representative Body is able to secure deductible gift receipt status it can attract resources through charitable donations. A CLG's structure can support the effective delivery on the Representative Body's purpose as it can be designed as simply and cost effectively as required.
- Inclusive representation**
 A green rating for inclusive representation has been achieved by a CLG because the entity structure itself is flexible enough to allow for the membership, candidacy and voting criteria to reflect the requirements set by the Aboriginal Community (as expressed through the Phase 2 Community Consultations and future consultation). It must be noted that there are limitations

under Australian law for the minimum age of Directors of a company⁵. The governance model is flexible enough to encompass the principle of inclusive representation and the roles and functions of the Representative Body focus on representing all Aboriginal Victorians through the potential Treaty, representation, advocacy and education functions of the Representative Body.

- **Unity**

A green rating has been achieved for unity by a CLG structure. Similar to the principle of inclusive representation, a CLG is a generic and flexible legal structure that can accommodate structures that serve to provide the Aboriginal Community with a unified voice. It can also have a dedicated function whose focus is on dispute resolution and unification of the diverse voices of the Aboriginal Community that may include regional electorate structures. The CLG also allows for a unique governance model to be designed which will also enable the Representative Body to reflect the principle of Unity.

- **Culturally based**

An orange rating has been achieved for culturally based by a CLG structure. This is because it is a Western legal structure, thus it is not specifically designed for the Aboriginal community. However, given a western legal structure will be required in order to interact with other legally or constitutionally established entities in the process of developing a Treaty Negotiating Framework, it is unlikely that there will be an entity structure that is not a western legal structure. However, the constitution and policies of the Representative Body can be designed to be culturally appropriate, as can the way that the roles and functions of the Representative body operate. Finally, one of the functions for the Representative Body is to strengthen Aboriginal cultures across Victoria, so while the entity itself may straddle the western and Aboriginal contexts, its purpose and effect can be to deliver culturally appropriate outcomes.

- **Transparent and accountable**

A green rating has been achieved for the design principle of transparent and accountable by a CLG structure. This is because it has mandatory reporting requirements through ASIC as well as having its representatives being Aboriginal Community members who are elected into the entity by the Aboriginal Community. The delivery on the purpose of the Representative Body is supported by the reporting standards required of a CLG as it will hold the entity accountable as well as keeping it transparent. The processes put into place within the roles and functions of the Representative Body will force it to be accountable and transparent because of its reporting requirements up to Government and also back down to the Aboriginal Community. However, the formal reports required under the Corporations Act as a private entity do not need to be disclosed to the public. This would only give ASIC and the members/electorate visibility of those reports. Any funding mechanism put into place for the Representative Body can have reporting and accountability mechanisms designed to enable appropriate transparency.

- **Skills based**

A green rating is achieved for skills based for a CLG. This is because the structure itself requires a certain level of skills for its leaders based on the fiduciary requirements under the Corporations Act, this then ultimately helps the Representative Body deliver on its purpose. Additionally, the constitution can include specific and relevant skills requirements for representatives.

- **Clan based**

An orange rating is achieved for clan based for a CLG. This is because the Representative Body is likely – based on Phase 2 consultation results – to include traditional owners are the representatives of Community, who in turn are all from clans. The desire to establish specific representative structures for each clan is not practical and may diminish from the overall purpose of establishing a Treaty Negotiating Framework for all Aboriginal people in Victoria.

⁵ *Corporations Act 2001* (Cth), s. 201B.

- **Other**

The blue ratings provided below are the areas that require further clarification. To provide an adequate assessment on representation against the Design Principles, a better understanding the Aboriginal Community’s instructions in relation to how the electorates will be structured and how people will be nominated is required. This will occur in a further round of consultation. Finally, the funding model element is also rate blue as this is out of the hands of the Aboriginal Community. An initial amount of money has been provided by the Victorian Government in the form of \$16.5 million over the next 4 years, however it remains to be seen what additional funding will be made available to ensure that the Representative Body remains independent, well-resourced and sustainable.

ORIC corporation analysis

The below diagram shows the assessment of each model element against each Design Principle in relation to an ORIC corporation (OC).

Figure 27: ORIC Corporation Analysis

		Design Principles							
		Independent	Practical	Inclusive Representation	Unity	Culturally Based	Transparent and Accountable	Skills Based	Clan Based
Model Elements	Purpose	Good fit	Reasonable Fit	Good fit	Good fit	Good fit	Good fit	Good fit	Reasonable Fit
	Entity Structure	Good fit	Reasonable Fit	Good fit	Reasonable Fit	Good fit	Good fit	Good fit	Reasonable Fit
	Representation	Good fit	Poor fit	Good fit	Poor fit	Good fit	Good fit	Poor fit	Reasonable Fit
	Governance	Good fit	Good fit	Good fit	Reasonable Fit	Good fit	Reasonable Fit	Good fit	Reasonable Fit
	Funding	Poor fit	Poor fit	Poor fit	Poor fit	Poor fit	Poor fit	Poor fit	Poor fit
	Roles and Functions	Good fit	Reasonable Fit	Good fit	Good fit	Good fit	Good fit	Good fit	Reasonable Fit

Key

 Good fit	 Reasonable Fit	 Poor fit	 TBC/NA
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The detail for each rating is outlined as follows:

- **Independent**

A green rating is achieved for independence overall as a CLG is independent of government, which allows it to fulfil its purpose of providing an independent voice for the Aboriginal community through the direct election of representatives asserting the principle of self-determination.

- **Practical**

An orange rating has been achieved for the practicality of an OC. This is because it has a legal structure that is prescribed by ORIC, e.g. it cannot be a proprietary company or a company limited by guarantee. The resulting oversight and regulation from ORIC may limit the Representative Body's ability to deliver on its roles and functions. However, ORIC does provide very clear governance frameworks and reporting requirements as well as dedicated training and advice.

- **Inclusive representation**

A green rating for inclusive representation has been achieved by an OC because the entity structure itself is flexible enough to allow for the membership, candidacy and voting criteria to reflect the requirements set by Community (as expressed through the Phase 2 and future consultation). It must be noted that there are limitations under Australian law for the minimum age of Directors of a company⁶. The governance model is flexible enough to encompass the principle of inclusive representation and the roles and functions of the Representative Body focus on representing all Aboriginal Victorians through the potential Treaty, representation, advocacy and education functions of the Representative Body.

- **Unity**

An orange rating has been achieved for unity by an OC structure. This is because ORIC determines the design of the legal structure which could impact the ability of the Representative Body to unify the community through its structure and governance. However, the purpose of the Representative Body can be supported through its focus on providing the entire Aboriginal Community with a unified voice. It can also have a dedicated function whose focus is on dispute resolution and unification of the entire Aboriginal Community as well as being constructed to provide all aspects of the Aboriginal Community with a voice.

- **Culturally based**

A green rating has been achieved for culturally based by an OC structure. This is because it is specifically designed for the Aboriginal community to incorporate traditions, culture and decision making processes. This is embodied in the Rule Book for each separate organisation and can be adapted to reflect individual cultural requirements and practices.

- **Transparent and accountable**

A green rating has been achieved for the design principle of transparent and accountable by an OC structure. This is because it has mandatory reporting requirements through ORIC which are more detailed than those of ASIC as well as having its representatives being Aboriginal Community members who are elected into the entity by the Aboriginal Community. The delivery on the purpose of the Representative Body is supported by the reporting standards required of an OC as it will hold the entity accountable as well as keeping it transparent. The processes put into place within the roles and functions of the Representative Body will force it to be accountable and transparent because of its reporting requirements up to Government and also back down to the Aboriginal Community. However, the formal reports required under the ORIC Act as a private entity do not need to be disclosed to the public. This would only give ORIC and the members/electorate visibility of those reports, however, a practice could be put into place to release the report publicly or at least the electorate. Any funding mechanism put into place by Government could help to ensure that this transparency remains intact.

- **Skills based**

A green rating is achieved for skills based for an OC. This is because the structure itself requires a certain level of skills for its leaders based on the fiduciary requirements under the ORIC Act, this then ultimately helps the Representative Body deliver on its purpose. Additionally, the constitution can uphold a skills requirement for its members and/or board and as with any organisation roles in the operational side of the organisation requires skills for those roles to be fulfilled properly.

⁶ *Corporations Act 2001* (Cth), s. 201B.

- **Clan based**

An orange rating is achieved for clan based for an OC. This is because the Representative Body is likely – based on Phase 2 consultation results – to include traditional owners are the representatives of Community, who in turn are all from clans. The desire to establish specific representative structures for each clan is not practical and may diminish from the overall purpose of establishing a Treaty Negotiating Framework for all Aboriginal people in Victoria.

- **Other**





The blue ratings provided below are the areas that require further clarification. To provide an adequate assessment on representation against the Design Principles, a better understanding the Aboriginal Community’s instructions in relation to how the electorates will be structured and how people will be nominated is required. This will occur in a further round of consultation. Finally, the funding model element is also rate blue as this is out of the hands of the Aboriginal Community. An initial amount of money has been provided by the Victorian Government in the form of \$16.5 million over the next 4 years, however it remains to be seen what additional funding will be made available to ensure that the Representative Body remains independent, well-resourced and sustainable.

State owned company analysis

The below diagram shows the assessment of each model element against each Design Principle in relation to a state owned company (SOC).

Figure 28: State Owned Company Analysis

		Design Principles							
		Independent	Practical	Inclusive Representation	Unity	Culturally Based	Transparent and Accountable	Skills Based	Clan Based
Model Elements	Purpose	Red	Green	Green	Green	Orange	Green	Orange	Orange
	Entity Structure	Red	Red	Green	Green	Orange	Green	Orange	Orange
	Representation	Red	Blue	Green	Green	Blue	Green	Blue	Orange
	Governance	Red	Red	Green	Green	Orange	Green	Green	Orange
	Funding	Blue	Blue	Blue	Blue	Blue	Blue	Blue	Blue
	Roles and Functions	Red	Green	Green	Green	Orange	Green	Green	Orange

Key		Good fit		Reasonable Fit		Poor fit		TBC/NA
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The detail for each rating is outlined as follows:

- **Independent**
A red rating is achieved for independence overall as a SOC is not independent of government. This means it will be difficult for it to fulfil its purpose of providing an independent voice for the Aboriginal community. This is because the relevant Minister is the sole shareholder and has ultimate say over the Board and purpose of the Representative Body as subsequent governments are able to change this. There may also be a perception within the Aboriginal Community that it is just another government entity and cause trust issues to occur between the Aboriginal Community and the Representative Body. In terms of representation, whilst the Aboriginal Community will be able to vote for their representatives the Government will be able to appoint Board members.
- **Practical**
A red rating has been achieved for the practicality of a SOC. This is because the structure is less flexible as it is ultimately a government entity and determined by government. Additionally, a SOC's structure can support the delivery on the Representative Body's purpose but that purpose can be changed by government when it chooses to. The roles and functions of the Representative Body will be supported by the practical nature of government wanting to ensure its entities operate in a cost effective manner. However, the reporting requirements as a government entity will be extremely heavy.
- **Inclusive representation**
A green rating for inclusive representation has been achieved by a SOC. This is because the Representative Body's purpose can be upheld through its purpose by acting for all Aboriginal Victorians. The entity structure itself can be designed to allow for all Aboriginal Victorians to sit on the board, be part of its membership and to vote. It must be noted that there are limitations under Australian law for the minimum age of Directors of a company⁷. The governance model is flexible enough to encompass the principle of inclusive representation through its constitution and the roles and functions of the Representative Body focus on representing all Aboriginal Victorians through the potential Treaty, representation, advocacy and education functions of the Representative Body.
- **Unity**
A green rating has been achieved for unity by a SOC structure. This is because the purpose of the Representative Body can be supported through the flexibility of a potential design to provide the entire Aboriginal Community with a unified voice. It can also have a dedicated function whose focus is on dispute resolution and unification of the entire Aboriginal Community as well as being constructed to provide all aspects of the Aboriginal Community with a voice by structuring the entity regionally through electorates. This will also flow through the governance model by holding the Representative Body accountable to its electorate through its decision making processes and policies.
- **Culturally based**
An orange rating has been achieved for culturally based by a SOC structure. This is because it is a government entity, meaning that it will not be owned by the Aboriginal Community and can be more easily changed by government, including Board members. Additionally, there are reporting requirements to government which do not necessarily follow culturally appropriate governance arrangements. However, the enacting legislation, constitution and policies of the Representative Body can incorporate culturally appropriate structures, as can the way that the roles and functions of the Representative body operate. But as outlined above, these can be changed by government if they choose to do so.
- **Transparent and accountable**
A green rating has been achieved for the design principle of transparent and accountable by a SOC structure. This is because it has mandatory reporting requirements through ASIC as well as having its electorate and board being Aboriginal Community members who are elected into the entity by the Aboriginal Community. Additionally, the sole shareholder is the relevant

⁷ *Corporations Act 2001 (Cth)*, s. 201B.

Minister and the Representative Body is ultimately answerable to the Minister. This means the reporting standards are extremely high and thereby the delivery on the purpose of the Representative Body is supported by the reporting standards required of a SOC as it will hold the entity accountable as well as keeping it transparent. The processes put into place within the roles and functions of the Representative Body will force it to be accountable and transparent because of its reporting requirements up to Government and also back down to the Aboriginal Community through the community members. Any funding mechanism put into place by Government could help to ensure that this transparency remains intact.

- **Skills based**

A green rating is achieved for skills based for a SOC. This is because the structure itself requires a certain level of skills for its leaders based on the fiduciary requirements under the Corporations Act, this then ultimately helps the Representative Body deliver on its purpose. Additionally, the constitution can include specific and relevant skills requirements for representatives.

- **Clan based**

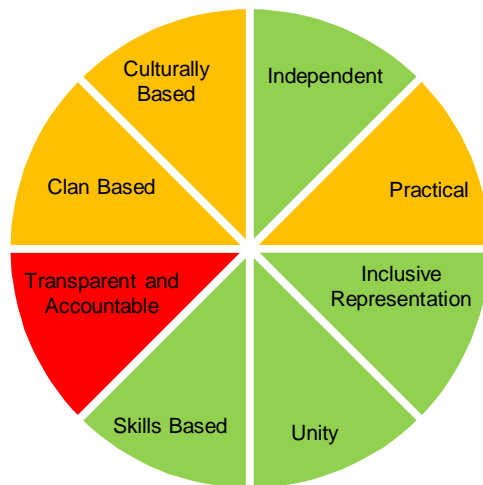
An orange rating is achieved for clan based for a SOC. This is because the Representative Body is likely – based on Phase 2 consultation results – to include traditional owners are the representatives of Community, who in turn are all from clans. The desire to establish specific representative structures for each clan is not practical and may diminish from the overall purpose of establishing a Treaty Negotiating Framework for all Aboriginal people in Victoria.

- **Other**

The blue ratings provided below are the areas that require further clarification. To provide an adequate assessment on representation against the Design Principles, a better understanding the Aboriginal Community's instructions in relation to how the electorates will be structured and how people will be nominated is required. This will occur in a further round of consultation. Finally, the funding model element is also rate blue as this is out of the hands of the Aboriginal Community. An initial amount of money has been provided by the Victorian Government in the form of \$16.5 million over the next 4 years, however it remains to be seen what additional funding will be made available to ensure that the Representative Body remains independent, well-resourced and sustainable.

Analysis of other entity structures

Below is the high level analysis for the next best three entity structures, these are a proprietary limited company, incorporated association and a statutory authority.

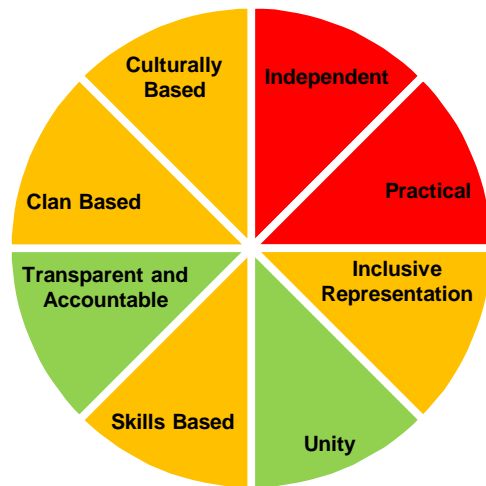


Proprietary Limited Company

Proprietary Limited Company

Overall medium rating against the Design Principles

Independent of government as a private legal structure. In terms of practicality it has low reporting requirements, but can be expensive to run and set up. Through its design it can be inclusive of all parts of the Aboriginal Community and thereby look to unify the Community. Due to low reporting requirements and it being a private entity, it is less transparent and accountable to either Government or the Aboriginal Community. It is a standard legal structure so not a culturally based structure but its practices, processes and constitution can be modified to make it more culturally appropriate. Its roles functions, board and leaders must have appropriate skills. Not every clan can be represented individually as that would make the Representative Body impractical but it can represent them through an appropriate regional structure through its electorates.

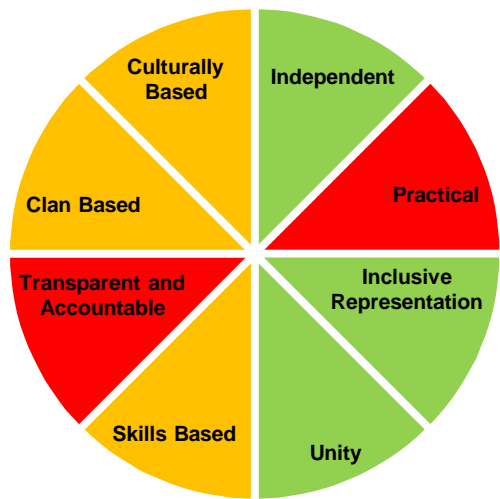


Statutory Authority

Statutory Authority

Overall low rating against the Design Principles

Not independent of Government as a public entity. In terms of practicality it has very high reporting requirements and accountabilities to the relevant Minister. Through its design it can be inclusive of all parts of the Aboriginal Community however Government can dictate who is appointed to the Board and who runs the entity. It is extremely transparent and accountable to both Government and the Aboriginal Community due to its public reporting requirements. It is a government legal structure so not a culturally based structure but its practices, processes and constitution can be modified to make it more culturally appropriate. Not every clan can be represented individually as that would make the Representative Body impractical but it can represent them through an appropriate regional structure through its electorates.



Incorporated Association

Incorporated Association

Overall low rating against the Design Principles

Independent of government as a private legal structure. In terms of practicality it is extremely simple and inexpensive, however it may be too simple and informal to run a sophisticated organisation as would be required for Treaty and representing the Aboriginal Community. Through its design it can be inclusive of all parts of the Aboriginal Community and thereby look to unify the Community. Due to low reporting requirements and it being a private entity, it is not transparent and accountable to either Government or the Aboriginal Community. It is a standard legal structure so not a culturally based structure but its practices, processes and constitution can be modified to make it more culturally appropriate. There are no skills requirements for leaders in the organisation but this can be created as a requirement. Not every clan can be represented individually as that would make the Representative Body impractical but it can represent them through an appropriate regional structure through its electorates.

Appendix C Comments from consultations

The tables below contain the comments made on the questionnaires during the Face to Face Community Consultations and Treaty Circles. The words below are taken verbatim from each questionnaire it was written on.

Echuca

- Should we be thinking about Treaty about moving towards something and growing something
- We have to negotiate with a government I have serious trust issues with
- We want them to pay the rent
- We need to bring a real sense of healing within our communities and families
- We need to take our state of affairs seriously internally
- We still don't have a voice in this nation that is elected...what we are doing today...we have an opportunity here
- Not all people can sit on these tables, whether they are at home, in jail or in hospital, they aren't here to represent themselves, we are here to represent them and we have to consider those people as well ourselves and our families
- This discussion for treaty is not just about for the now, it is for the future
- If my uncle lives across the river in NSW but uses Victorian services and considers themselves a Victorian or to associate/identify with Victoria more - than this may exclude them
- No matter where you are you have an identity to somewhere
- If you are going to go into treaty you have to recognise that the people you are going to negotiate a treaty with is the community, not necessarily a TO group
- This would set a process where communities would be empowered
- A group of elders to have a role
- This process is to protect and enhance, not take away
- Can we have a young person, a middle person and an elder so there is equal representation from all generations and then also educating younger people

Mildura

- It can't be politics, it can't be duplicating ATSIC
- We don't hear about this until the day before
- I work in family violence and I didn't get anything, there is an Aboriginal Action Committee you could send it out that way
- We don't want to go back to an exclusive 12 that did too much damage
- We want regional spokes to speak on behalf of local area and region
- I as a Lachi Lachi person I would only talk on behalf of my traditional owner mob
- You have to look at traditional boundaries because they blow white Australia's boundaries out of the water
- I think we are ready to get a Treaty, we need to get this into legislation and not wait for another 20 years
- Treaty is an easy word to say, but it's a very big job
- There is too much worry with the word Treaty and always look overseas but it's different here, it's totally different, it's gonna be an agreement and based on respect, but also done in good faith
- The government are going to send some cold hard negotiators so we need to send our best hunters and warriors
- Made up of majority of TO's but is inclusive of every aboriginal person in that area
- Inclusive of all demographics
- Need to make it harder to nominate
- You can't keep people in there where they get stale but can't let it so people can't come in and provide new blood
- First candidates need to have 50% for 5 years and then 50% for 3 years and then from then on it needs to be 5 year terms with 50% spill every time

- Need to look how you spill a board based on attendance and participation
- There has to be accountability
- There might be built into the charter some accountability principles, especially for the first group
- We need to get as many skills as we can
- Getting balance in the room is the challenge and key at the same time
- It must include border towns/cross borders
- Need an ethics committee with the discretion to say yes or no on the disrepute qualification for candidates who are nominated
- Baseline skills required for all candidates then at least one of the identified skills
- Not necessary in one candidate but overall gain as many as you can across Rep Body
- A split that ensures that equal population numbers are represented in each region = a say for each region
- Plus members of Parliament. Additionally, can't just have one option as a mix would be better to get the balance between State-wide views and regional views
- Plus additional positions for Metro

Portland

- We need to put a timeline on having a Treaty negotiation framework
- Anyone who resides in Victoria should have a say in how we pick our rep body
- All Aboriginal people, but if you are from another State then you need to have lived in Victoria for specific period of time
- A lot of our aspirations across communities have been documented by TO groups
- It's about carrying the messages up but then bringing them back down too
- Would it be better as appointment process rather than an election process
- Grass roots needs to be defined and needs to be a positive definition
- It would be to get something done with confidence that it will get done with confidence and when the framework is built and confirmed and that rep body needs to consider how it deals with being able to share the resource around.
- A character reference needs to be provided, or a working with children check or a common seal on character reference
- What about providing an amnesty to register for the VEC/AEC
- A Treaty does not belong to an organisation it belongs to all of us
- A tax incentive would be good instead of handouts, e.g. percentage of land tax in NSW
- We need seats in Parliament so we are on an even keel
- WA has an Aboriginal person for the new treasurer
- I'd agree with the 5 regions but with 2 from each region
- In Aboriginal culture, elders are the essence and bureaucracy has taken that away
- Have to be a parent as criteria or if you are under 18 you have to have a child to be a candidate
- I support the ATIWG to recommend a representative body
- Native Title creates 'blues' all the time because people who don't know anything about country try to speak for country
- Treaty for me is sovereignty, self-determination and land based so it's about traditional owners.
- Democracy doesn't work for us
- As someone who has historical ties to WA but have grown up and been born here I wouldn't feel comfortable speaking for treaty in WA, but I do here because I am connected here
- You need to know what the existing structures are first
- Need to work out GDP of an area and then pay it back over number occupied years a percentage of that and then start looking at representation
- Needs to ensure that it doesn't make it harder for Aboriginal kids in schools in relation to bullying. It comes down to education
- Diversity of age groups must be considered (maybe a youth committee).
- Only T.O's can negotiate local treaties
- Time limit on indictable offences
- First Nation people speak on their country
- Young Treaty yarning circles

- Aboriginal orgs declining memberships
- Voting should not be dependent on VEC/AEC enrolments as not all people enrol due to sovereignty
- Respect and love of Aboriginal culture and caring for the people and land. A great elder or mentor
- Traditional owners boundaries should be the split

Sale

- You don't want it to become the survival of the fittest, some areas of this State is in much better shape than other areas. For example Shepparton is thriving because it has really good representation
- This seems to me that it's going back to ATSIC and then that got knocked on the head so what's the difference gonna be?
- Political environments change all the time
- If this gets up it'll be pretty deadly I reckon
- I think it's really good you're trying to do this locally its really good
- There should be a number of points that you need to hit before you can even nominate, e.g. 1. I have lived in Vic for 10 years 2. I am active in community 3. more criteria
- Carve up state in Alpine, saltwater, freshwater, desert and concrete
- In order to keep non-traditional people involved you allow them to vote
- 13 reps would make sense to ensure maximum representation from the state
- Has to be a place based approach (where you live not where you belong) and then work out the boundary
- The ATSIC boundaries worked
- Gippsland has to be represented, not one of the aboriginal orgs has anyone from Gippsland
- This is deadly and moving along from what I can see
- Elders Council a good idea to determine a good fit for candidates

Wodonga

- You are gonna have a lot of problems where different groups don't get on, how are you going to do that?
- If you don't sort your representative group out you can't move to the next step, i.e. Treaty
- Reconciliation amongst ourselves is key
- If we're going to be part of a Treaty we need to come together as a nation of Aboriginal people. Whatever this group is needs to be a true peak body and represent all of us. There is no peak body right now that does that, there is nothing that sits over the top
- Is it by design or by default that some of our leaders work for the government, we don't have that vehicle to place our greatest leaders in. We don't have a mechanism for our greatest leaders and speakers to sit equal with government.
- The representative body needs to be truly independent so if and when the funding stops then it can survive.
- How do we make sure that this is true and that the Treaty lasts for seven generations from now?
- It has to be economic independence, but the people sitting in rep body aren't compromised by their positions in society
- Each of the 39 tribes should be represented, they should all be equal. At the present the system is no good, there are some tribes who have got everything and others who have nothing. We need everyone to be equal.
- I reckon the TOs in each area should discuss all this in detail and then they pick a male and female to speak on behalf of them
- The government need to change their language around what a TO is...right now its defined by their RAP status and don't acknowledge those who don't fall under that definition
- A first step in Treaty is that those who are invisible become visible
- Self-determination is about everybody

- Corporations don't work and are full of nepotism and it becomes very stagnant. It should be like anything, if you are of age and you fit the criteria you should be able to vote.
- I work in Victoria, although Wiradjuri Heritage. I strongly believe our Elders and Traditional Owners will after us well. We need to go back to listening to our old people. I would want Traditional Owners in NSW to make these decisions
- Not from this Country but came in support of my Elders and traditional owners from Wodonga. I also am part of the Wodonga community and attend school here
- Independent of government, to vote freely and not have to be registered with the electoral role. Needs to be best practice but able to change and adapt
- Tribes who have native title or TOS agreements will want to be represented and rightly so. All tribes should be represented out of respect
- Factor in Wodonga from the North East because we come under the umbrella of Shepparton
- I would like to see the framework no matter what model it may be, that it includes all aboriginal people who are connected to the area. Reps need to be able to negotiate so we are able to achieve the best outcomes for all Aboriginal people
- Should not be effected if traditional boundaries crossed state lines or disputes re: boundaries
- People with cultural knowledge who have lived in the area for more than 2 generations
- Have to have lived in Vic for more than 5 years
- T.O. defined by what was said at the forum (e.g. not government's definition of TO rather the groups that have their country in Victoria but are not recognised in addition to those who are recognised, e.g. Bangarang)
- Personal nominations should be supported by traditional owners
- An Aboriginal person can self-nominate or others nominate but they must be a traditional owner
- Nominate and have 20 traditional owner signatures – can't be too deadly
- Have an ethics council who reviews all candidates and must have one or more of the knowledge/skills/experience outlined in question 7
- Don't agree with compulsory requirements, but a good mixture of skills is required
- Don't want to exclude if people have cultural knowledge but not formal education. There needs to be a mix of skills
- Understanding of Aboriginal nation building principles
- Traditional owner may live off country or to country crosses Victorian state lines
- All 39 Victorian mobs get 1 rep each
- Tribes who have native title or TOS agreements will want to be represented and rightly so. All tribes should be represented out of respect
- Look at old Mirimbiak boundaries and see what worked, but want equal representation from each of the 39 to groups
- May our journey be one that is respectful of all Aboriginal people and their clan groups
- Base boundaries on cultural shape of nations and cultural affiliations

Melbourne

- Aboriginal people who live in Victoria and have contributed to Aboriginal communities, I think they should be allowed represent
- Could it be all aboriginal on the electoral roll
- Why do we need to fit in a basket made by a white fella anyway
- We want to have the best Aboriginal people in charge of their expertise
- We all have different expertise and how we can express our cultural knowledge, and there are a lot of people who don't have Western style of schooling and how we get the right balance
- Everyone in Victoria wants a Treaty, no has disagreed about that. There are some real difficulties but we have to work through them as we go. One difficulty is that Victorian Aboriginal TO should be standing for election, so who recognises them? Not just the Victorian Government recognised ones, it needs to be recognised by Aboriginal community. And then how do we vouch for that?
- We could cut this and splice this than just boundaries, so we could reflect our own ways of splitting it back

- You can co-opt experts in
- This is about a process and what it's going to do for the population of Victoria
- If there was a Treaty in place now, my guess would be that the Rep Body would be facing burn out because of the Governments noncompliance with a Treaty
- Have teams. E.g. 2 elders, 2 TO's, one teach savvy person to all groups can liaise and a mixture of men and women and of a variety of age groups. Then one person reports back. Each region to work out who is in the group and who to report back.
- People with authority, traditional owners, cultural and authority over country industry-based knowledge, legal knowledge, negotiating capacity and expertise. Accountability structures - ongoing + looking forward + ability to co-opt
- Important to consider expertise in areas - knowledge in Health, Education, Justice issues, Child Protection, Culture, etc.
- Aboriginality must be determined if accepted prior to nominations being accepted
- One female, one male position I believe should be made available to a NVI person. These candidates should hold a position separate to the regional boundaries
- If there were a high calibre of candidates who are not TO's, could they be considered + co-represent another TO representative?
- It is important that a voting structure exists that allows all Aboriginal people to vote and vote only once, given that some countries straddle both NSW and Vic. Also if there were no boundaries, we would find regional/country voices would be lost. This cannot be allowed to happen.
- Enrol to vote (AEC). Black parliament of Victoria. Portfolio: Womens;Mens;Youth;Land;Health;Education;Art&Music;Language;Waters
- Organisations already have strong contribution/voice. Treaty needs to be set up by the people, for the people represented by communities NOT ORG's. Culture, language, connection to protocols. Cultural rules for election campaign with clans.
- Allows for Victorians interstate and puts onus on others here to have a part to look after where they are.
- If body is set up to represent all Aboriginal people, then all Aboriginal people should be eligible. *Concern about people from here who aren't living in Victoria
- How would candidates campaign? Strongly believe that if you are actively living and contributing to the community, you should have the right to work
- 16 yrs and over plus anyone who is approved by a Vic Aboriginal organisation as having adult roles/responsibilities (i.e parenthood)
- I feel all Victorian aboriginals should make decisions on their ancestors (and with input from Aboriginal people living in Victoria)
- All aboriginal people who have a connection to Victoria i.e border communities being included.
- A person who strongly represents the Victorian community
- TO's have right to speak for country. Others have right to speak for services/industry.
- Traditional owners must be represented but also must live in Victoria
- 33% of seats to TO's; 33% of seats all born here; 33% of seats all live here (for 10 years or more) + 50% male and 50% female
- All Aboriginal people require a voice, however Traditional Owners need to own elected representation on Country
- No first Nations Elders
- As recognised by the Aboriginal community, not government i.e raps
- Secret nomination process. All three are appropriate if those are separate representative colleges. Strict code of electioneering conduct which ensures an equal footing
- Needs to be strict criteria. Each tribe develops a group who selects a representative to speak on behalf of group/tribe. Aboriginality must be confirmed.
- A mixture of ABC ensures that people are recognised by appropriate people and shows dedication to the position

- Where there isn't a TO, the group can collectively gather to elect their representatives or clan by clan formally endorsed by full TO group.
- As long as it is done by credentials + ability and not a popular vote
- TO groups might not necessarily represent fairly a Nation or Clan, requiring a more open process which may still be fraught with nepotism
- *must gather 50-100 eligible voter signatures. Organisations & corporations are not inclusive. Membership numbers are low across organisations and corporations. TO only.
- People whose nomination is rejected can appeal + make their case to a Council of Elders
- A candidate can still nominate if employed the Crown. If successful, they should only be expected to resign if they are in an executive position.
- Has to be a respected person in the Aboriginal communities
- Should have another aspect if someone hasn't been in trouble for 20 years then eligible is a national police check will bring up youth convictions.
- The value in those who may have a problematic police record which has not been expressed within the last 20 years should be considered.
- People who use lateral violence against other Aboriginal people/organisations should not be allowed to be a candidate
- Lots of black fellas have a past but now doing good things in community. Who decides this?
- Staggered elections so that the knowledge remains within on the work done so far.
- The best people to advocate on our behalf - Able to advocate on our behalf - Able to look to the future.
- This map needs to be topographical. Needs a few workshops in itself. Redefining from past or colonial boundaries. Do not use colonial boundaries please!
- Traditional boundaries for cultural perspectives
- Possibly look at a minimum of 2 from each region in regards to C (gender based). Cost could be a big factor.
- I'm not sure of the boundaries traditionally. The representative body should follow lines of traditional nations and language groups i.e Kulin Group rather than a "North, South, East, West, Metro"
- College based electoral structure. Colleges could be set up to accommodate different groups.
- My elders say no jurisdiction to any 'gubbament' deals. (TOSA - NO)

Online

- Clans belong to Country not ACCHOs. ATSIC and ACCHO style bodies have failed First Peoples and are in part nepotistic and corrupt particularly some of the well-known self-proclaimed Peak Bodies and Regional ACCHOs. If this is the case then so are some government agencies who turn a blind eye to it. There should be a Royal Commission to weed out corrupt and nepotistic practices. A Treaty or Treaties must have "clean hands". An elected, Clan based regionalised transparent Treaty Commission will represent all First Peoples, support proper organisational practices and negotiate the finer details of Treaty or Treaties. We do not need two bodies. Clans need a better way of being consulted and need to be resourced. The current process is ineffective and lacks any real substance on the issues.
- Stolen Generations voice needs to be considered or referenced rather than excluded all together youth and Elders however an elders voice should always traditionally be heard before youth as that is custom and LORE.
- Western districts for my mob from Framlingham Gunditjmara. Peoples in other parts of Vic are not the same and I would not like representatives from other areas providing a voice on behalf of me and my family.
- Creating stability in the organization along with accountability is key.
- Treaty is a must and we should focus on an entity and election process with integrity and appoints those with skilled in leadership, risk and negotiation experience.
- A treaty should only be undertaken between the state and a Traditional Owner group. The State already recognises Traditional Owners as Registered Aboriginal Parties. The State should be seeking individual treaties with each Registered Aboriginal Party.
- Traditional Owner Family clans must negotiate a Treaty for their own behalf over lands and waters in their own traditional country, all family clans with Traditional connection to Victoria must elect their own representative to then seek inclusion onto their relevant Regional elected representative body to negotiate a treaty for that Family clan group.

- Treaties are for traditional owners first then a suite of rights that include all other aboriginal and Torres Strait islanders. Let's make this work
- Important for candidates to show community presence at various levels within a local & regional level. Also show strong "thought leadership"
- The representatives should comprise organisation representatives as well as those whose main objective is country because Aboriginal organisations have been at the spearhead of Aboriginal Affairs in Victoria since the 1930's and have provided the strategic direction for Governments, Victoria had led the way in National Affairs because if the leadership displayed in Aboriginal organisations that have established solid partnerships and agreements with government and non-government stakeholders. Aboriginal Victoria has to take a stand against a minority of people who have loud voices and who oppose every viable suggestion that is proposed by people who have been around for a long time and who have successfully gained the rights we enjoy today. This is an opportune time that cannot be lost.
- First Nations are not bound to colonial state boundaries but their own sovereign lands and waters. Representation covers traditional lands and waters that are physically connected to and within Victoria.
- Further refinement should occur I propose a specialist aboriginal working party be formed for the sole purpose of this work including statutory powers, including training for board responsibilities and governance requirement including confidentiality requirements.
- The process and structure for the Rep body will need to be chosen by AV as a Government rep. in consultation with community and government of course. But to rely on the community to arrive at such a decision is unrealistic based on the nature of the topic. There is too much bias and areas of interest that can be perceived as conflicts to do anything more than go around in circles. And there should be! If people aren't bias about this they don't deserve to be involved in this conversation. If an "in faith" action isn't taken, we will never move on from this trivial question. Like the debate of the chicken vs egg, but instead its process vs the outcome- does the outcome dictate what process should be enforced, or is it the process that will dictate the outcome. It won't matter as long as both are involved
- Nominations need to be based on credentials and skill, it cannot be a perceived system where 'everyone gets a turn' Final endorsement of representatives should require the ED of AV or Minister for Aboriginal Affairs or Premier of Victoria to sign off, Like the VAHC and Traditional Owner Land Management Board - for consistency.
- Effort should be made to bring all Victorian Aboriginals into the voting process, including the homeless, marginalised, etc.
- In order to build Community Consultation on Aboriginal Representation, this I feel would require ongoing effective, collaborative and inclusive consultation on Federal, State and Local Governments to ensure that knowledge of Aboriginal culture, both past and present is paramount and in doing so Aboriginal peoples can and should equally develop self-directed independent Aboriginal policies, procedures and programs for Aboriginal peoples.
- These reps must not consist of more than one person who are at least 3rd cousins from any particular family group either so it has more inclusive of the people being represented.
- Prefer regional structure to ensure that there is a mix of people from around the state who are voted in
- We cannot have a repeat of what happen with the old frame of ATSIC, it would not benefit what we need in Victoria. And don't have people involved, who are just shit stirrers.
- Do you know were Mildura is and last minute invite, why use indigenous facilitator across the state to help and AV staff
- I find this survey flawed. The assumptions about the structure of the rep body follow western notions of organisation and already have a government flavour.
- Very excited to hear the results. Congratulations to AAV and the State Government.
- Treaty is made between sovereign nations. In order for these treaties to be successful and true to what a treaty is it needs to be agreed to by the different language and cultural groups in Victoria.
- I hope to see future message sticks that request feedback from community about the content or issues that a Treaty should include, e.g. including Aboriginal topics in early childhood education and early primary school years for all schools (the current systems keeps us invisible and non-existent to mainstream Australia until they are 10 years old - too late by then); taking away council rates for Aboriginal home owners; commitment to Aboriginal visibility across the state; commitment to sites, resources and spaces for Traditional Owners and Aboriginal people to build upon and protect cultural material and continue to grow our cultural knowledge and skills, etc.

- Clans belong to Country where the Treaties will be. Must be a Treaty Commission that represents us all and negotiates the Treaty aspects including dispute resolution.
- *Cultural knowledge *The Murray River (Dhungala) was never a boundary for the Yorta Yorta Nation and we recognise our people and Country across borders
- If no boundaries present there must be a balanced representation of regional clans or area descendants balanced with gender plus skills and capacity reflected.
- It is important that traditional owners retain responsibility for, and control of land and traditional cultural matters.

Postal

- Cost of campaigns, electoral boundaries are too large and would be very expensive to run a targeted campaign
- Consider a transitional justice model that can incorporate all faces of a TJ framework including a truth and reconciliation commission so that our people, particularly our Elders can tell their stories and relieve themselves and their families of some of the trauma they are having to bear. Reparations focussed - individual (scholarships etc.), community (memorials, cultural footprint) and broader state recognition
- Consultation needs to be rapidly expanded, we need thousands of responses not hundreds for this to be widely supported across the communities
- Representative should be strong in culture and identity and have a strong voice for self-determination for all our mobs
- Candidates should hold a cert of business gov.
- Representatives a balance of men and women. Use govt. legislation to support structure by HR legislation
- If Aboriginal people are born and raised in Vic regardless of what State/Territory their Aboriginality is from they should get a vote
- Traditional boundaries should be enforced
- In direct connection and direction from the Creator spirit I did not grow up Aboriginal (stolen gen), but who was deeply spiritually aboriginal from birth
- People who identify as Victorian Aboriginal
- Include Torres Strait islanders who live in Victoria and have children in Vic
- only Aboriginal people living in community
- No VEC process, recognise cultural boundaries
- Votes done as tribes, state boundaries are not tribal boundaries, cultural boundaries not state
- Known to have lived and grown up in the community and known by the aboriginal community identified by the community that they live in
- All Aboriginal people in Australia
- Spiritually tuned elders from all over should be, if not elected, closely consulted the Creator's directions is what ultimately are responsible to implement, not personal or solely political agendas. He is the boss. If we forget that we have forgotten the true essence of what it is to be Aboriginal
- Aboriginal people who have strong connection to community
- People who identify as Victorian Aboriginal
- Aboriginal people who are connected to community in which they live
- Anyone recognised and nominated by their local Aboriginal community
- I don't feel qualified to speak on practical details, but I would say community members and elders not just organisations should have a say
- Comes down to traditional owners. Elders council to nominate who represent Aboriginal people from their tribes
- All comes down to TO. They have more right to choose who be their voice. Elders council to nominate who should represent Aboriginal people from their tribes
- Candidate must be accepted by the community and lived in the community and committed to the community
- Ratified by Elders. If lore is not respected as foundation then we may as well say there were no tribes in Vic just one
- A candidate can be nominated by community members and meet with the elder to be eligible their approval

- It is important to have a team player, leader and respected individual with no baggage. Maybe a personality test so each person understands themselves better and what that means to the way they think/interact with others
- Anyone who is known to have misappropriated funds from ACCHOS or been dismissed on misconduct as known by community. Introduce ethics committee to knock those out who not represent based on community knowledge
- those that practice lateral violence against others and do not communicate well should not be a candidate
- Known by their community to be have done wrong by the community and proven by Ethics Council
- If they stuff up then they get to go and their seat filled by a nominated member by the community
- If someone has been/is being removed community should re-elect to be the candidate not government
- Let the candidates be nominated for an extra term because it would be important to have people with knowledge and passion
- Need to look at original clan/traditional aboriginal borders are not Vic Govt Borders
- Neighboring clans/mobs to reflect region or collective. Not all Vic have NT or Rap, Mobs could team up to rep a particular region together
- Should ensure voice of all Aboriginal Victorians are heard
- Mob boundaries
- Each tribe in Vic represented. Vic ATSL residents tribal links elsewhere to have standalone equal seats. State broken into four regions, each tribe in each region responsible for voting on a central voice for region, e.g. 9 Tribes in North-West will vote for 3/5 reps for that region. Tribes will need work it out in reach region.

Appendix D Dates of consultation

Date of consultation	Consultation location
7 March 2017	Echuca
9 March 2017	Mildura
14 March 2017	Portland
16 March 2017	Sale
21 March 2017	Wodonga
23 March 2017	Melbourne

Appendix E Aboriginal Treaty Interim Working Group terms of reference

Purpose

The Aboriginal Treaty Interim Working Group (the Working Group) exists to consult Aboriginal Victorians and advise the Minister for Aboriginal Affairs on the steps necessary to establish a representative body in order to progress the development of a treaty and to progress the broader self-determination agenda.

Objectives and scope

The objective of the Working Group between January 2016 and 31 December 2017 is to:

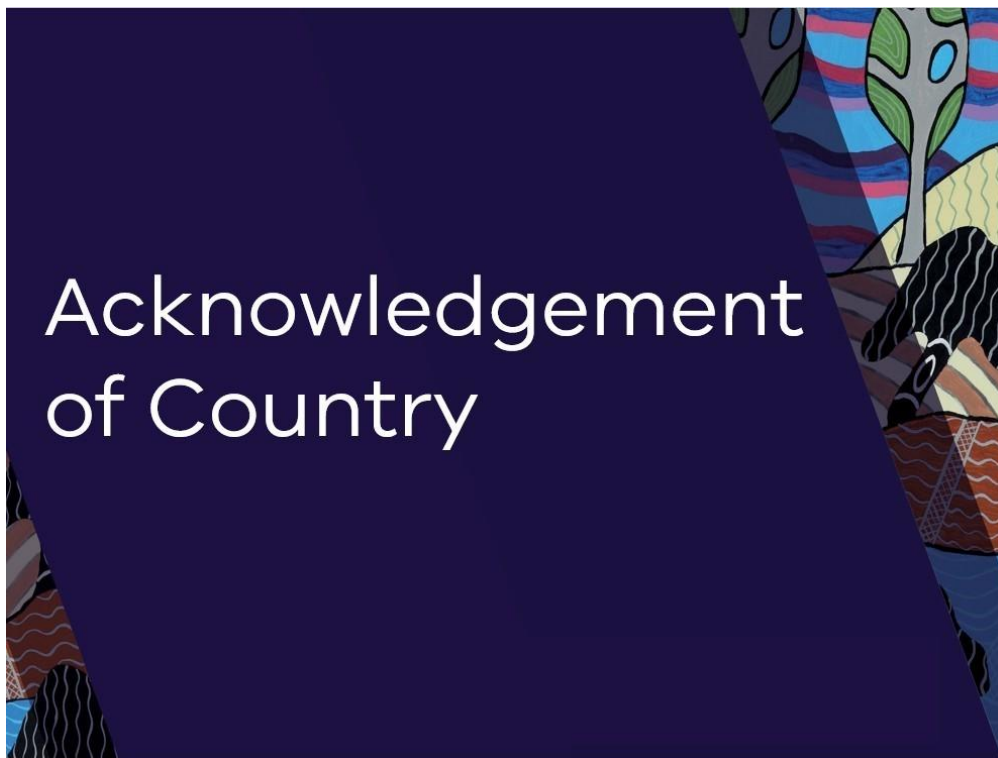
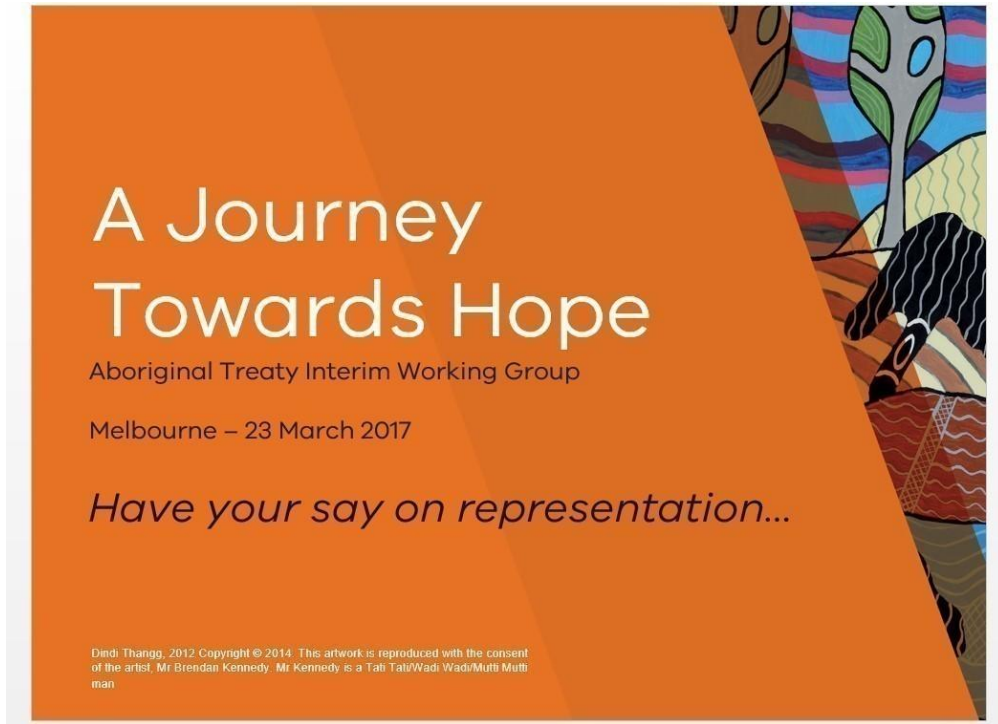
1. Complete community consultations to inform the organisational design of the Aboriginal representative body for approval and authorisation at a state wide Aboriginal forum in April 2017.
2. Advise the Minister for Aboriginal Affairs and the Aboriginal Victorian community on:
 - (a) The process, timing and next steps for the establishment of the Aboriginal representative body and preparation for treaty discussions
 - (b) Building community understanding of treaty
 - (c) What material, expertise or assistance will assist the Aboriginal community to participate in the treaty negotiation process
3. Participate in a Premier's Gathering in the first half of 2017
4. The members of the AITWG are volunteers and do not receive 'sitting fees'.

Appendix F Next steps

The table below summarises the next steps proposed for the establishment of a representative body. These actions are drawn from Sections 5.2 – 5.7 of the report on Model Elements.

Next steps
Use the purpose to drive and strategy and vision of the Representative Body
Finalise the preferred entity structure of the Representative Body.
Finalise the candidate nomination process and the voting structures.
Confirm culturally appropriate ways of informing, authorising and implementing decision making processes that can be applied in a Representative Body.
Establish an effective and appropriate long term funding mechanism for a Representative Body given its final roles and functions
Design the required roles and functions for the Representative Body to carry out its purpose
The members of a Representative Body will ultimately have responsibility to determine the specific roles and functions that it delivers

Appendix G Slides from the face to face community consultations



Code of conduct

Responsibilities to each other

Respect for Elders

Respect for ourselves

Respect for each other

Respect for difference

Respect for our families

Respect for young people

Let people have their say

No abusive language

No threatening behaviour

Drug and Alcohol Free Event

Agenda

1. Introduction and
Background



Break



2. Representative Body:
Representation

Break

3. State-wide Forum



Break



4. Treaty Circles: Run
Your Own Consult

Introduction and Background: Where we have come from

We've consulted on design principles and the roles and functions of the representative body.

The remaining piece of the puzzle is representation and decision making.



See information on your table for the detailed journey so far

Introduction and Background: Where we are going



NOTE: Time is not to scale

Introduction and Background: Where we are now



Timing is critical to get this across the line before the next election

Introduction and Background: Consultation approach

This consultation approach is based on the feedback provided by those who attended the Aboriginal Victoria State-wide forum on 13 December 2016. The approach has three different parts to it:



Introduction and Background: Community consultations



 **State-wide Forum**
28 April 2017 - Melbourne

Representative Body: Representation

Representative Body: Representation

What are we here to talk about?

Today we are talking about the make up of the representative body and how community gets represented

Representation is at the heart of this

Today, your voice will help to shape the next steps in the design of the representative body



Representative Body: What is representation?

Representation has three primary components:

VOTING

- who can vote
- how is voting organised

CANDIDATES

- who can be chosen as candidates and how

ELECTORATES

- how people are nominated to be on the representative body (voting boundaries)

Representative Body: Background to basis

The basis of the questions we cover today include:

1. The Representative Body represents all Aboriginal People who live in Victoria and reflects the principle of self-determination
2. The Representative Body is a formal and permanent organisation (whether through legislation or otherwise) that is independent of government and whose primary purpose is to facilitate the authorisation of Treaty/Treaties
3. The role of the Representative Body is to represent, advocate, educate, develop a State-wide Treaty negotiation framework and engage with community and government about Treaty/Treaties
4. Only Traditional Owners can negotiate local Treaties for their country, supported by a State-wide Treaty negotiation framework
5. Voters must be 18 to be eligible to vote
6. The Representative Body is sufficiently resourced and funded to operate as an independent voice for Aboriginal people living in Victoria



Representative Body: Representation

These questions will inform the finalisation of detailed model options for the representative body.

We will go through each question now. Please look at the questionnaire on your tables.

Representation Questions

1. What is the purpose of the Representative Body?

2. Who are eligible to vote? (Select all that apply)

3. How are candidates nominated? (Select all that apply)

4. How long should candidates serve for? (Select all that apply)

5. What voting structure do you want to use for the Representative Body? (Select all that apply)

6. Should candidates serve for fixed or renewable terms? (Select all that apply)

7. What qualifications, skills and experience do candidates need? (Select all that apply)

8. What voting structure do you want to use for the Representative Body? (Select all that apply)



Representative Body:

Voting

1. Who is eligible to vote? Select any you agree with.

- a) All Aboriginal people who live in Victoria
- b) Aboriginal people who were born in Victoria
- c) Victorian Aboriginal traditional owners
- d) All Aboriginal people
- e) Other – share your thoughts



Representative Body:

Candidates

2. Who can stand for election? Select any you agree with.

- a) All Aboriginal people who live in Victoria
- b) Aboriginal people who were born in Victoria
- c) Victorian Aboriginal traditional owners
- d) Other – share your thoughts



Representative Body:

Candidates

3. How are candidates nominated? Select any you agree with.

- a) A candidate must self-nominate and be supported by a Victorian Aboriginal organisation
- b) A candidate must be nominated by a recognised Traditional Owner corporation
- c) A candidate must self-nominate and gather 20 eligible voter signatures
- d) Other – share your thoughts



Representative Body:

Candidates

4. What should disqualify someone from being a candidate? Select any you agree with.

Anyone who:

- a) Would bring the organisation into disrepute (see *below for definition*)
- b) Has been convicted of a serious indictable offence (see *below for definition*)
- c) Other – share your thoughts

**If elected the candidate cannot also be a public servant, a Member of Parliament or a Member of local Government.*

Disrepute: Conduct that is illegal or generally immoral in the eyes of the community would be considered conduct that could bring the organisation into disrepute.

Indictable offence: Offences that include and are similar to aggravated burglary, sexual assault, drug trafficking offences, murder and manslaughter.



Representative Body:

Candidates

5. How long should candidate terms be? Please choose one option.

- a) Three year terms
- b) Four year terms
- c) Other - share your thoughts



Representative Body:

Candidates

6. Should candidate terms be fixed or renewable? Please choose one option.

- a) Fixed terms (the candidate can only stand once and cannot stand again)
- b) Renewable terms (the candidate can stand for re-election)
- c) Fixed terms, and cannot stand for consecutive terms (the candidate have to sit one term out before standing again)
- d) Other - share your thoughts



Representative Body:

Candidates

7. What knowledge, skills and experience do you believe it is important for candidates to have? Select any you agree with.

- a) Victorian Aboriginal culture and communities
- b) Aboriginal affairs in Victoria
- c) Leadership and advocacy
- d) Legal/governance
- e) Finance and accounting
- f) Public office experience
- g) Risk and strategy
- h) Government/policy experience
- i) All of the above
- j) Other – share your thoughts



Representative Body:

Electorates

8. What voting structure do you want for the Representative Body? Please choose one option.

- a) No boundaries, State-wide vote for the best people for the job regardless of where they live
- b) 3 regions (West, Central and East)
- c) 5 regions (North, East, South, West and Metropolitan)
- d) Other - share your thoughts



State-wide Forum

State-wide Forum: Entity Design

During the State-wide Forum your views will be heard on the preferred options for a representative body.

Before then, the options will be refined and informed by the information provided today and by any information coming from Treaty Circles.



Treaty circles

Next:

Treaty circles



Facilitating a Treaty Circle



Treaty Circles: Run Your Own Consult

Treaty Circles:

Overview

Treaty Circles are community led consultations and provide the opportunity for you to have a conversation with your family and your mob, at a place of your choice.

Holding a treaty circle is simple



Treaty Circles:

Prepare



In Treaty Circles you will cover most of the same content we have worked through today:

Overview of where we have been, where we are going and where we are now in the journey towards treaty/treaties

Questions about the representative body

Treaty Circles will not cover the State-wide Forum or the Entity Design process.

Treaty Circles: Organise

Think about:



Use the ATIWG and AV to help promote your Treaty Circles



Location and timing is up to you

*It is important to ensure that the space of a Treaty Circle is **culturally and physically safe**, so participants are safe to share their opinions

Treaty Circles: Holding a Treaty Circle



When holding a Treaty Circle, your role is to:

Ask questions, tell stories and use examples

Make sure everyone understands the questions and has their say

Keep everyone on track – make sure all of the questions are covered

Fill in the Online Message Stick or a paper form with the results and opinions of the Treaty Circle

Ensure you stay objective during the discussion. It is very important that everyone has a say within the Treaty Circle. ***Even if you don't agree with what they are saying.***

Treaty Circles: Responding to questions



During Treaty Circles there is a good chance there will be some tough questions.

Responding to these, we recommend you:

REPEAT

Repeat the question so everyone can hear the question and discuss it if appropriate

REFER

Refer to all materials provided to help answer the question

WRITE

If you can't answer the question, write it down and explain you will send it to the ATIWG and AV for further clarification and get back to them

Treaty Circles: Finish and reporting




To end the Treaty Circle:



We recommended working through the questionnaire during the session so you have an accurate record at the end.

Don't forget to thank everyone for coming!

When the Treaty Circle is finished, it is your job to report back on the Online Message Stick – what did the group answer to the questions?



**Thank you for being here and helping
to build this pathway toward
Treaty/Treaties.**

Stay connected...

www.vic.gov.au/aboriginalvictoria/treaty.html

*Let's yarn about Treaty, have
your say...*

Appendix H Aboriginal Victoria forum summary

On 28 April 2017 a State-wide forum was held to report back to the Aboriginal Community on the current design process for the Representative Body. The forum comprised three panels and was designed to be an information provision forum as well as a workshop at the end to seek guidance on how to best structure the next phase of consultations. The decision to make it an information provision forum rather than a decision making forum was due to the further instruction required from the Aboriginal Community to finalise the design of the Representative Body. During the forum, each of the panels focused on explaining a different stage of the journey towards a Treaty. Specifically, where the journey had come from, where in the journey the process is currently and where the journey is going next. The panels were made up of members of the Working Group, Aboriginal Victoria and EY and began with a Q&A before opening the panel up to questions from the floor and online.

The forum began with the Hon. Minister for Aboriginal Affairs, Natalie Hutchins, announcing that \$28.5 million in the upcoming budget will be set aside for Aboriginal self-determination including \$16 million to be put towards establishing a Representative Body for Treaty. This was responded to by the Working Group who also announced their preferred entity structure for the Representative Body and the need for further and final consultations on the design of the Representative Body. These further consultations would come in the form of a Community Assembly over the May – August 2017 period.

Throughout the forum, there were participants who were critical of the process for lacking transparency and openness. These criticisms were from a small number of people who monopolised the Q&A sessions. Despite emerging from a vocal minority the Working Group acknowledged these requests and assured participants that there was a significant amount of evidence underpinning the work and conclusions of the Working Group and that this would be released urgently.

Below is a transcription of what questions were asked of the participants in relation to the next phase of consultation as well as comments provided by participants in relation to the process to date. This information will help to inform and instruct the Working Group as to how best design the next phase of consultation whilst addressing the concerns outlined by the participants during the forum.

Designing the community assembly agenda

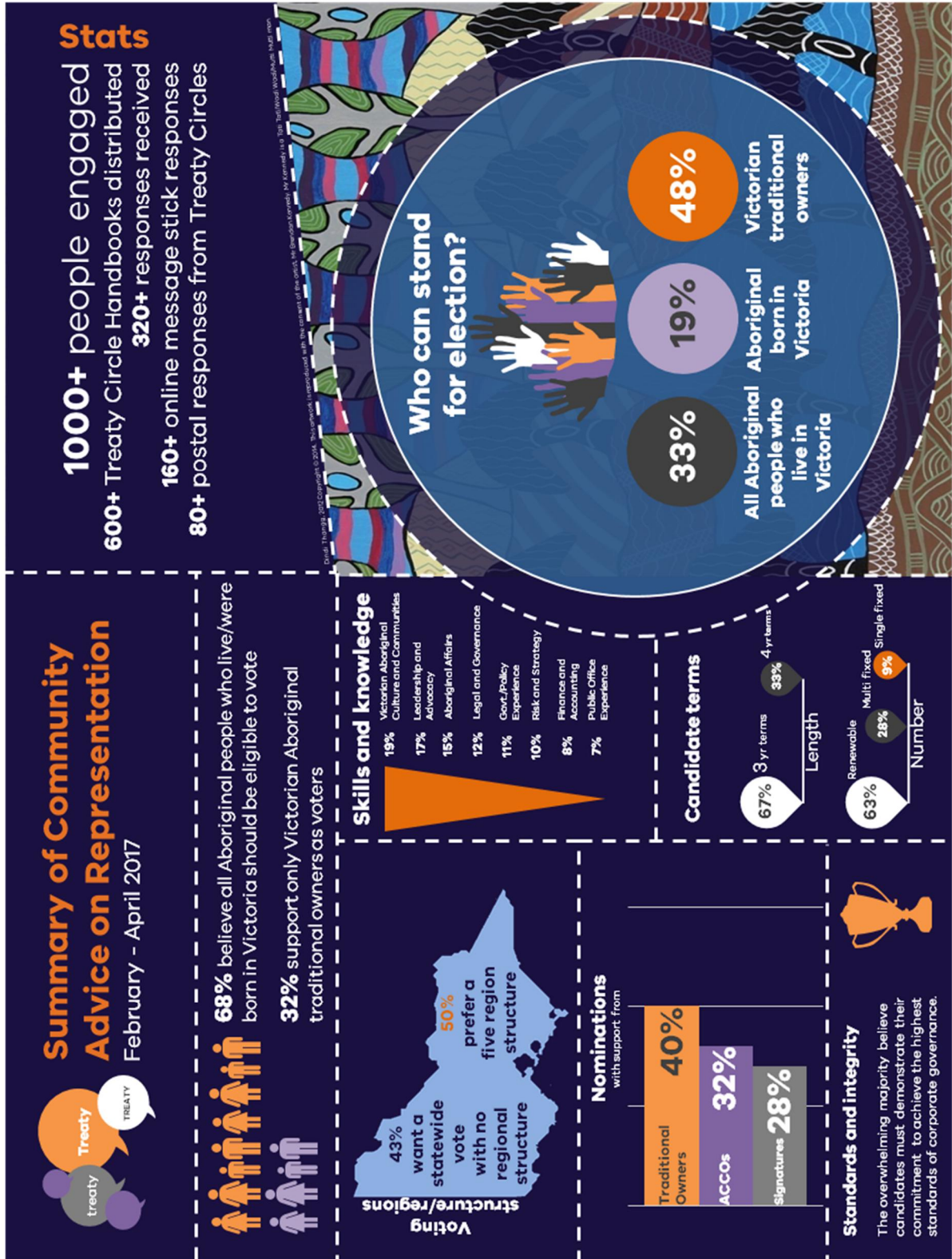
		Question posed to participants		
	Response sheet #	What else would you like the Community Assembly to discuss?	Who would you like to be involved?	Any other comments?
Participant responses	1	Candidates are to be first nations of South Australia. Elder Council. Voting to be done by First Nations People of South Australia. Stolen Generation members. Elders Council have seat in voting structures. Youth members. No to company structure as First	Participants: International treaty models and their first nation people to speak to us at assembly with what treaty pro and cons to treaty. First nation people of South Australia.	UNDRIP to be on structure/agenda of Assembly that will look at Treaty and set foundation for voting. Do they talk about Treaty and Royal Death in Custody, look at both recommendation

		Nation woman this not reflect my society rights under UNDRIP	Organisations are not to have seat as they have their platform to Govt and State Govt. Speakers: Elders council, treaty members, Robbie Thorpe, Stolen Generation, youth and voice of men and women in jail	
	2	NO RESPONSE	Participants: TO's, individuals, ACCO's	NO RESPONSE
	3	Designated positions in parliament. A cultural responsiveness framework that is auditable by the Community Assembly Group that all businesses must meet (e.g. standards)	Participants: All the mob	Good job to the interim working group for getting us mob this far
	4	We need an appropriate structure for people to participate in Community Assembly. At the State forum the same people get to ask all the questions. We need people to only ask a couple of questions this will allow others to talk.	Participants: All the mob be invited to forums Speakers: Local people who want to talk at forums	NO RESPONSE
	5	Candidates should be nominated by Aboriginal orgs because they been established for over 30-60 years and have proven their sustainability. Candidates should demonstrate their ability to commit to their past record in commitment to Aboriginal issues and affairs in Victoria and expertise in negotiating with Government. Enrol on an Aboriginal enrolment roll – this will be difficult because how can you prove who the traditional owners are. Stolen Gens need special consideration to find their family roots. There are questions about how they can prove connection.	Participants: Any person who want to be involved if they have any issues they want discussed Speakers: Dynamic, well informed speakers. Experts on international law in regard to Treaty	Need good facilitators who can keep the group in order and on track. Richard did a good job today and he has got a good sense of humour and is seen to be unbiased. Good job to the interim committee. Congratulations to the Andrews government for their courage in trying to deal with a community with dissention. Well done Natalie.
	6	Will negotiation for Treaty include % of Victorian GDP. Will there be bipartisan support for Treaty. Will Treaty be finite and can Treaty content be review and re-negotiated at interval. What will be the most advantageous legal framework that allows for autonomy	Participants: Everyone who is interested in moving forward with Treaty Speakers: Only speakers who are imperative to facilitate discussion	Need to ensure that cultural respect is paramount while managing inclusive consultation/discussion over organisation bashing

	7	Self-nomination. Experience and qualifications, community, skill specific	NO RESPONSE	NO RESPONSE
	8	How do you reconcile TO groups that can't come together so they can make one decision for one group. Fractional groups need to unpack before anything can move forward	Participants: Need to be unbiased and not for their own agenda. Clans need all to be involved not self-elected	Speakers need to keep to the agenda that is on the table. People need to respect others and their visions, not believing that they speak for all. We need to work on unity not separation
	9	Victorian Aboriginal Political party	Participants: Clans Speakers: Clans representatives	All groups who all themselves TOs should address all TOs who identify as them. Accept membership from all TOs to be on those groups
	10	What are the key social issues that Aboriginal Community need to work through to close the gap. How will decisions be made within the Community Assembly? Can we ensure that the Aboriginal representation will take all voices and opinions into consideration	Participants: All aboriginal people residing in Victoria	Working together. Unity.
	11	Very disappointing day. As a strong Aboriginal woman who works closely with our people – Family violence, child protection, courts. I felt the agenda was already set by the working committee. What was the difference of today and colonisation? We dictated to today. Very disappointing.	NO RESPONSE	I watch the departments remove our children each week. Today I heard nothing that will help us come together as a community and help these kids. Just another handpicked working group. Where was the voice of the people working in/on the grass roots
	12	Previous discussion hotpoints. Follow up actions completed since last forums and previous forums. Planning made by forum to take to communities	Participants: Community Elders and grass roots members Speakers: Panel members who've attended communities	NO RESPONSE
	13	How many reps. What about cultural standards. Why should we be forced into a corporate structure. Establish Elders council. Discuss regions and how to include mob from TO groups which cross the border. Whether voting should be attached to State elections and how to register as an Aboriginal voter. Need to seriously consider Statutory Body Structure, e.g. South	Participants: Treaty and legal experts	NO RESPONSE

		Australia Aboriginal Lands Treaty – were free to operate autonomously		
	14	How to inform the larger community in different formats (reports, online, digital information) of discussion that happen. What resources can be made to inform the larger community about Treaty/Self-determination/Sovereignty	Participants: Elders, community reps, young people, any other (lawyers etc.) need to have information set not a decision making role	Need education resources given
	15	NO RESPONSE	NO RESPONSE	Only 30 mins for workshop discussion – not adequate. Too much talking at the group. Need to setup space to unite our mobs, not divide otherwise we can't move forward
	16	NO RESPONSE	NO RESPONSE	Include the Elders, draw on the extensive work and knowledge they've already done on Treaty. This isn't new business
	17	NO RESPONSE	NO RESPONSE	What a shame today's planning didn't hit the mark. I attended major forums, not the regionals. My recollection of the interim working group's job was to present some models or a model? I think giving some models for choice might have been helpful. But in saying that, the process of today that the original idea of an assembly got lost. Obviously a representative body to set up a representative body is the next step – lots of people are confused. We're losing time and opportunity due to this confusion
	18	NO RESPONSE	NO RESPONSE	How has this treaty process been informed by the UN DRIP
	19	NO RESPONSE	NO RESPONSE	Feedback process is disempowering, we're not fully informed. Working group holds power.
	20	NO RESPONSE	NO RESPONSE	What if the RAP/TO's endorse candidates and the RAP/TO's are exclusive of membership
	21	NO RESPONSE	NO RESPONSE	Will there be a voice for the Stolen Generation to be accepted into the local community that they reside in as not all can get back to their own community from

	22	NO RESPONSE	NO RESPONSE	All information and outcomes from the Working Group needs to be distributed throughout all communities before these forums so all community/people aren't coming in blindfolded. Having everyone and up to date is very important
	23	NO RESPONSE	NO RESPONSE	That the final treaty between first peoples and the State of Victoria, Commonwealth of Australia have relevant benchmarks and targets to achieve the consciousness level of the country and first peoples collectively, to that prior to 1770, consciousness 555, unconditional love, as equitable justice for the harm done by colonisation based on terra nullius. That the preferred model and integrity of the treaty is in unity and harmony with the self-reliant ecological and cultural clan geographic country given the State of Victoria, Commonwealth of Australia and 'western societies' are on the brink of collapse, socially, environmentally, economically and culturally, therefore a model for sustainable representative first peoples creative descent given climate change and peak oil, e.g. close the gap by reducing standard of living of non-aboriginals
	24	NO RESPONSE	NO RESPONSE	No explanation of why a company ltd structure is preferred. Where are the pros and cons for a statutory body? The forum process in this regard is intellectually dishonest



Appendix J Communique from the Aboriginal Treaty Interim Working Group: May 2017



Communique from the Aboriginal Treaty Interim Working Group

An open letter to the Aboriginal community following the Victorian Treaty Forum on 28 April 2017

We would like to start by acknowledging the traditional custodians of the land on which we gather. We would like to pay our respects to Elders past, present and emerging - for they hold the memories, the traditions, the culture and hopes of Aboriginal people across the nation. We would also like to extend our respect to all the people that have committed their lives, time, knowledge and passion over the years to advance the cause towards treaty.

This has been a battle since colonisation began and those alive today stand on the shoulders of warriors past that have helped continually fight for our rights to self-determination.

What we are doing now continues this fight and is as much about those yet to come as it is about those who are here now.

The Aboriginal Treaty Interim Working Group (the Working Group) was tasked with the role of helping to shape the early steps towards treaty.

The Working Group's role is not to negotiate treaty, nor is it to set up what a treaty negotiation framework should look like between government and the Aboriginal community.

The Working Group's role is to consult the Aboriginal community on what it would like to see in a representative structure so the government has an equal partner to work with on the pathway to treaty.

Since the Premier agreed to enter into the treaty process in February 2016, there has been lots of consultation and engagement reaching up to 7500 people directly and hundreds of thousands more through conversations amongst family, friends and across digital media.

The consultation and engagement towards the end of 2016 was about asking the Aboriginal community what sort of principles they wanted in their representative structure and what sort of roles and functions they'd like it have.

In terms of principles, there were lots of things that came back that are detailed in the December 2016 report on the consultations (available online at Aboriginal Victoria's website) with the overarching principle being that the representative structure should be democratic and independent from government so that the Aboriginal community can pick its own team and not have it picked by government. This has never happened before.

In terms of roles and functions, again there were lots of things that came back which can be read about in the report. However the overarching principle was that the representative structure is to authorise treaty/treaties.

The consultation and engagement from the first part of this year has recently concluded and we have professional services firm Ernst & Young busily preparing the public report for community to show the detailed results of this round of consultations, the reasoning behind why a company

limited by guarantee was chosen by the Working Group and what work remains in finalising the representative structure.

The Working Group acknowledges that having this information available for the Victorian Treaty Forum on 28 April 2017 would have been ideal and helped community understand the detailed logic behind the decision with much more clarity, which the report certainly will when complete.

With the Victorian elections in 2018 fast approaching, it's important that as a community we capture this opportunity. This is the first time in the history of Australia that any government, at any level, and of any persuasion, has committed to a process towards treaty. It is a time we cannot waste.

With this in mind, we need to get the foundations laid for a representative structure which is enshrined in legislation. This is so, regardless of what happens at the polls next year, we are in a position to build upon the pathway to treaty with a representative group chosen by the Aboriginal community - not government.

The Working Group would love nothing more than to be able to detail for the Aboriginal community with absolute certainty all the remaining steps towards treaty. However, as it is an evolving process we simply can't do this.

The Working Group's task is to ensure a representative structure is developed that represents the wishes of the community that have come through the consultation and engagement process.

In terms of next steps, there will be a public report from Ernst & Young with a detailed analysis of the results from this round of community consultations and engagement along with the rationale of why a company limited by guarantee was chosen by the Working Group as the preferred legal structure over all other models.

The Working Group are currently finalising the details for the Community Assembly (the Assembly) that was announced at the state-wide forum but largely its job will be to provide recommendations back to the Working Group on the final elements on the representative structure so it can be presented to the government and established.

The Working Group is aiming to have the terms of reference for the Assembly finalised this June so the expression of interest process can start with the Assembly running across the second half of 2017. This will mean that any Aboriginal Victorian will, once again, have the chance to have their voice heard.

The Working Group acknowledges it has asked a lot of the Aboriginal community in a short space of time. For giving your time, knowledge and passion we thank you, as it has ensured, and will continue to ensure, that the representative structure we end up with as a community will be truly representative. Once we have a representative structure it's then that the exciting work starts of working out a process for Treaty negotiations.

In closing, the Working Group would like to highlight for the broader Aboriginal community that this has not been an easy process for traditional owners, with much discussion and debate across this whole process reflecting the diversity of our community. We believe that as a community our culture and connection to country will forever belong to us and will never be extinguished. We are committed to ensuring the diversity of our shared community is central to the treaty process.

Sincerely,

Aboriginal Treaty Interim Working Group

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