WHAT IS TREATY?
HISTORY OF TREATY IN VICTORIA
WHERE ARE WE UP TO?

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What is Treaty?

Treaty is a legally binding agreement that has come through acknowledgment, discussion, and negotiation, concluding with substantive outcomes for each party.

Treaty formalises the relationship between the parties and brings binding obligations on them.

Each Treaty can be different in its characteristics as Indigenous groups in Victoria will have their own varied expectations and requirements that need to be met.

An aspect that is relevant for Aboriginal people in formulating treaties is the right to self-determination, which involves the right to freely determine their political status and freely pursue their economic, social and cultural development. This includes the right to autonomy and self-governance.

Other nations have developed and formed Treaties with the Indigenous peoples including the United States, Canada and New Zealand. Australia is currently still in its early stages of treaty making, opening the conversation for the nation.

“We’ve waited 230 years for an opportunity to negotiate a treaty, and we have an opportunity staring at us right now, so the more people who enrol and vote, gives us more power”

*Jill Gallagher, Victorian treaty advancement commissioner*

References

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4. NITV, Treaty for Dummies
5. Would a treaty help Aboriginal self-determination? Jens Korff
Victoria was arguably home to the first attempted treaty between First Nations people and European colonisers. In 1835, John Batman presented the Wurundjeri Elders with an agreement on behalf of the Port Philip Association. Through the exchange of food, blankets and tools, he acquired 360,000 hectares of land from Geelong to Melbourne. The significance of this event is widely recognised, as the Batman treaty acknowledged the Aboriginal peoples as the original owners of the land.

Later that year, the agreement was annulled by the Governor of NSW and it was proclaimed that any negotiations with Indigenous Australians for the land will not be legally recognised unless the Crown had purchased the property. This rejection of the Batman treaty has set the precedent for Indigenous land ownership rights to this day.

Prior to the Traditional Owner Settlement Act 2010, the first acknowledgement of native title claim made in Victoria was by the Yorta Yorta people in 1994. This event helped clarify aspects of native title law, particularly in areas of significant colonial settlement. However, the current legislation is based on Australian law principles, which is markedly different from the customs and concepts of water and land to Aboriginal and Torres Strait Islander people. These customs are based on culture, identity and traditional laws. This has been a key challenge in the development of appropriate and comprehensive recognition of Aboriginal and Torres Strait Islander water and land rights.

The Traditional Owner Settlement Act 2010 was enacted in Victoria, following the Native Title Act 1993 (Cth). This Act was key to the recognition of water and land rights, addressing the significant historic dispossession of country resulting from colonisation.
History of Treaty in Victoria

2014

There were no further attempts to negotiate treaty between the traditional owners of Victoria and the subsequent influx of colonisers from 1835 onwards.

However, with the election of the Andrews Labor government in 2014, treaty between the State and the First Nations of Victoria was raised as a possibility.

2018

In 2018, the Victorian Government implemented the Advancing the Treaty Process with Aboriginal Victorians Bill 2018. The passing of this bill would establish the first legislation nationwide to address treaty with Indigenous Australians. Victoria has become the first state to commence formal treaty negotiations with Aboriginal peoples in their jurisdiction.

References

1. Australian Geographic, ‘On this day: Batman Treaty annulled’
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“Treaty will have benefits for all Victorians – promoting reconciliation, fostering shared pride in Aboriginal culture and helping to heal the wounds of the past.... Aboriginal Victorians will continue to be the centre of this process, as we work towards establishing the Aboriginal Representative Body”

Natalie Hutchins, former Victorian Aboriginal Affairs Minister

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The Advancing Treaty Process with Aboriginal Victorians Act 2018 has done much to promote reconciliation, support the appreciation of Aboriginal culture, and ‘tell truth’ about the shared history of Victorians since colonisation. The process has enabled wider community acknowledgment and appreciation of the unique rights, history and culture of Aboriginal Victorians. To ensure the needs of the community are addressed and met, the Act requires the Victorian Government to work alongside an independent Aboriginal Representative Body to enable future treaty negotiations.

The Advancing Treaty in Victoria process will be lengthy. The work of the Advancing Treaty Commissioner has been to lay the groundwork for the establishment of a First Nations Assembly of Victoria. This representative body, will then be responsible for negotiating the framework for future treaty negotiations with Victorian First Peoples. 21 Aboriginal Victorians were elected to the First Nationals Assembly of Victoria on November 2019.

“The assembly here in Victoria can be about empowerment. It can be about reshaping our relationship with Victorians, reshaping our relationship with government, and acknowledging the past so we can all move on”

**Jill Gallagher, Victorian Treaty Advancement Commissioner**

The Framework will include matters to be outlined in what can be negotiated for, who can negotiate and how negotiations will take place. In order not to exclude any communities, the Representative Body will not speak on behalf of a specific nation, country, clan or family. To ensure adaptability, independence and responsibility, it will be independent to a government statute. Areas of focus will be establishing a Self-Determination Fund that supports Aboriginal Victorians with the negotiation of treaties, a Treaty Negotiation Framework that will outline the guidelines, and a Treaty Authority that will be an independent mediator for the treaty process to ensure consistency.

As an independent agency to the government, the First Nation’s Assembly of Victoria will act as a voice in the treaty process. A core component of the Victorian treaty process is the representation of the rights set forth by the United Nations Declaration on the Rights of Indigenous Peoples, which will be a cornerstone of the Assembly’s decisions.
Where are we up to?

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“Treaties can deliver for all Victorian citizens, we can share with all Victorians the oldest living culture in the world... Our language, our stories. We can enrich Victoria and all Victorians by exposing them to Victorian Aboriginal cultures”

Jill Gallagher, Victorian Treaty Advancement Commissioner

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5. Victoria Treaty Advancement Commission, The First Peoples’ Assembly of Victoria election
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“What Aboriginal people ask is that the modern world now makes the sacrifices necessary to give us a real future. To relax its grip on us. To let us breathe, to let us be free of the determined control exerted on us to make us like you... recognise us for who we are, and not who you want us to be. Let us be who we are – Aboriginal people in a modern world – and be proud of us.

Acknowledges that we have survived the worst that the past had thrown at us, and we are here with our songs, our ceremonies, our land, our language and our people – our full identity. What a gift this is that we can give you, if you choose to accept us in a meaningful way”

Referendum Council member, Galarrwuy Yunupingu in his essay ‘Rom Watangu’