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Since 2018, the First People’s Assembly of Victoria (The Assembly) has been actively progressing negotiations with the Government for a state-wide Treaty and for local Treaties which may deal with a number of possible organisational groupings. These may be existing native title (NT) groups, groups who have achieved the recognition of their rights and interests under the Victorian Traditional Owner Settlement Agreement (TOSA), groups who assert a cultural identity associated with a language group (LG) as it appears in the ethno-historic record and other, as yet to be defined, smaller localised configurations of Traditional Owners (TOs).

The ‘Treaty’ Act sets forth a framework for initiating negotiations for Treaty agreements between the State of Victoria and the Aboriginal Peoples of Victoria. The Treaty Act defines guiding principles, the Treaty negotiation framework and legislates for the creation of a Treaty Authority (The Authority), which will act as an independent umpire overseeing and facilitating Treaty processes while ensuring that negotiations are reflective of the Treaty Negotiation Framework (i.e. that agreements are ‘grounded in culture, lore and law’).¹ Members of The Authority will be nominated by an independent panel and will be approved by The Assembly and the Victorian Government. It is anticipated that The Authority will also be responsible for conducting research to support and inform Treaty negotiations and to assist groups with resolving existing and arising conflicts and disputes. As an independent body, The Authority will not report to any Ministers and its funding will not be subjected to fluctuations in political power.

As part of its key responsibilities, The Authority will also be accountable for managing and administering (among other things) a *Self-Determination Fund* (The Fund). Initial consultations regarding the purpose and structure of The Fund have been ongoing and further details are expected to be forthcoming in the coming months. The most recent announcement from the Victorian Government noted it has set aside just over \$60m for the first four years and around \$20m for each year The Fund continues to be necessary. The purpose of The Fund is two-pronged. Firstly, it seeks to equip TOs with the funds and resources they need to become ‘Treaty-ready’ so that they can enter into Treaty negotiations with the Government. Secondly, it aims to support communities to ‘build wealth and greater capacity for future generations’.²

The establishment of the Yoo-rrook Justice Royal Commission has operated as a parallel process to Treaty. As Australia’s first ‘truth-telling’ commission into the injustices committed against Aboriginal Victorians since colonisation, the Yoo-rrook Justice Commission aims to ensure that all Treaty negotiations are ‘underpinned by a commitment to truth-telling’,³ although it has not yet been made clear how this will be achieved.

The Assembly is currently constituted of 21 *general* seats, which are open to any member of the Victorian Aboriginal community, and 10 *reserved* seats which are designated for TO representing

¹ Accessed via: <https://www.firstpeoplesvic.org/treaty/treaty-authority/>

² Accessed via: <https://www.firstpeoplesvic.org/treaty/self-determination-fund/>

³ Accessed via: <https://yoorrookjusticecommission.org.au/overview/>

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groups who have been recognised by the Victorian Government as either a NT holding group, a group with a TOSA agreement with the Victorian Government or as a Registered Aboriginal Party (RAP) through the Victorian Aboriginal Heritage Act. This has frustrated many Aboriginal groups without formal recognition who wish to secure a seat on The Assembly. While The Assembly has created alternative pathways for the representation of TO groups who are not formally recognised, the alternative route has yet to be clarified. Currently, it is our understanding that Aboriginal groups will need to meet certain criteria set out by The Assembly in order to be considered for a reserved seat. It is then up to the Assembly Chamber to decide on whether to grant a group a reserved seat. To date, there has been no public indication that The Assembly has extended such an invitation to any Aboriginal group in Victoria without formal recognition.

While there is certainly an appetite for Treaty in Victoria, there are a number of critical issues that have arisen to date which demand further discussion. Within the limited scope of this paper, we can only touch on the issue which we opine requires the most immediate attention - the implementation by The Authority of *minimum standards*.

The Assembly and the State have announced the formulation of minimum standards that Aboriginal groups must meet in order to have standing to negotiate a Treaty or Treaties with the State. However, what these minimum standards will look like remains unclear. One possible outcome may be that, should The Assembly and The Authority create more inclusive criteria for recognition that depart from current guidelines in the Native Title Act (NTA), a new range of issues concerning overlapping and competing claims to country and identity may well open up. Another possibility is that The Assembly and the State cleave to the existing principles of the NTA and further entrench the current unsatisfactory status quo.

Importantly, it is unclear how these new minimum standards will impact on the many issues created by the complex and already crowded legislative framework concerning the formal recognition of Aboriginal rights and interests to, and on, country in Victoria. It is also unclear as to what role, if any, the notion of *normative society* and the continuation of laws of customs will play in the new minimum standards. Whatever the minimal standards ultimately are, ongoing community and family disputes will continue to impact upon the Treaty process and there appears, to the authors, to be an ongoing role for the objective expertise provided by native title anthropologists in this space.