

REPRESENTATIVE STRUCTURES FACT SHEET



These fact sheets have been prepared to support conversations with the community about self-determination. Nothing contained in these fact sheets should be taken as legal advice or a statement of policy or intent by the Victorian Government.

Why does representation matter?

A representative structure is an organisation or group of people who have been chosen to represent a wider group or community, and who can make decisions on their behalf. The individuals who make up a representative structure can be chosen by voting, or can be nominated because they have particular experience or standing in the community, for example as service providers or Traditional Owners.

Representative structures are different to other organisations, such as peak organisations, which are very important to the community but have not necessarily been chosen by the community to represent them in discussions with the government.

Representative organisations for Aboriginal people can make communicating and negotiating with the government easier. A representative group of people that has the trust of their community can help both communities and governments to communicate and negotiate well.

Representation can help communities to:

- > Make decisions together;
- > Manage their own affairs;
- > Lead policy development on Indigenous issues;
- > Ensure that Aboriginal voices are heard on all issues that impact them;
- > Advocate for the protection of Aboriginal rights;
- > Negotiate with government; and
- > Work in partnership with the government where appropriate.

What are the challenges?

Establishing representative structures is a complicated business. Like other communities, Aboriginal communities are diverse and can include different interests that sometimes compete or are in tension with one another.

The Australian Human Rights Commission (AHRC) has suggested some principles to consider in developing new Aboriginal representative structures:

- > Have legitimacy and credibility with both government and Aboriginal people.
- > Provide 'two way' accountability—to government and to Aboriginal communities.
- > Be transparent and accountable in their operations, while taking care to protect customary processes.
- > Be truly representative by ensuring the participation of different groups of people including traditional owners, young people and women.
- > Provide a 'connected' structure, so that there is a clear relationship between the representative structure and peak bodies, service delivery organisations and other representative mechanisms.
- > Be independent and robust in their advocacy and analysis.

QUESTIONS THAT WILL NEED TO BE ASKED WHEN ESTABLISHING A REPRESENTATIVE STRUCTURE

How independent from government will the structure be?

Will the structure be based on regional representation? How will the boundaries of the regions be agreed?

Will the structure represent traditional communities and others?

Will the structure represent groups that are not recognised as Traditional Owners?

How will the representatives be chosen?

Agreeing on the principles that will guide the development of new representative structures in Victoria will be an important first step for any future treaty negotiations. The AHRC principles are a helpful starting point, but the Aboriginal peoples involved need to decide their own.

Representative structures need to determine how independent from the government they will be. Most representative structures depend on some level of government funding, but to be truly effective they must also be sufficiently independent of government to provide critical advice on policy and programs.

Aboriginal representative structures also need to reflect community decision-making processes, not just non-Indigenous or government ways of doing things.

What are the options?

Indigenous people seeking to form a representative structure can choose to base their representation on:

1. **Different geographical levels—local, regional, or national; or**
2. **Their Indigenous nationhood groups—for example Yorta Yorta or Kulin, which may or may not overlap with other local or regional boundaries.**

This is an important choice as it establishes the group with whom a treaty or treaties can be negotiated, and it will also reflect the level at which decisions will be made.

TYPES OF REPRESENTATIVE STRUCTURES

Some options for developing representative structures for Indigenous people include:

A STATE-WIDE REPRESENTATIVE ORGANISATION

There is currently no state-wide representative structure for Aboriginal Victorians, although the 39 Local Aboriginal Networks across the state do partially fulfill this role.

In Canada, where states are called provinces, there are some provincial Aboriginal representative organisations, which have been established to advance treaty matters at the provincial level.

For example, the First Nations Summit in British Columbia consists of elected First Nations representatives. It represents its members' interests to the government and to the BC Treaty Commission. Two of the four commissioners on the BC Treaty Commission are elected from the membership of the First Nations Summit. The Summit has five executive members who are elected by First Nation chiefs (www.fns.bc.ca/index.htm).

A model like this could be useful if Aboriginal people in Victoria choose to negotiate a single treaty with the Victorian government and agree that a state-wide representative structure should be the appropriate negotiating party. Deciding on the number of state representatives, and how they should be chosen, would be very important.

NATIONAL ADVOCACY ORGANISATIONS

National representation and advocacy can be very powerful, but it can only be effective if it properly reflects the concerns of local communities. Finding ways of doing this well is challenging. Australia, Canada, New Zealand and the United States all have independent national-level organisations that represent the interests of Indigenous peoples.

In Australia, Aboriginal and Torres Strait Islander people have had some form of elected national representation almost continuously since the 1970s, including the Aboriginal and Torres Strait Islander Commission (ATSIC) from 1990 until 2005.

CHAMBER 1

National Peak Bodies and other representative bodies (State/Territory and Regional).

CHAMBER 2

Sectoral Peak Bodies and experts.

CHAMBER 3

Merit selection process. Aboriginal and Torres Strait Islander organisations and individuals.

MURDI PAAKI REGIONAL ASSEMBLY (MPRA)

Provides a decision-making forum for 16 communities across western New South Wales. Murdi Paaki developed out of a former ATSIC Regional Council of the same name;

Covers the traditional lands of 12 different nations;

Represents community interests to the MPRA through Community Working Parties that determine community priorities and sustain the practice of community governance.

ANANGU PITJANTJATJARA YANKUNYTJATJARA

Includes all Pitjantjatjara, Yankunytjatjara and Ngaanyatjarra people who are traditional owners of any part of the Lands as members (who elect the ten members of the Executive Board).

TORRES STRAIT REGIONAL AUTHORITY

Composed of an administrative arm and an elected arm of 20 elected representatives who are Torres Strait Islander and Aboriginal people living in the Torres Strait region.

ATSIC included elected representatives from 35 Regional Councils across mainland Australia. The two Victorian Regional Councils were Binjirru and Tumbukka. Enrolled ATSIC electors voted for representatives on their Regional Councils, then these councillors elected a Regional Chairperson and Deputy Chairperson. The Regional Councils were grouped into 16 ATSIC zones, which elected the ATSIC Board.

Although the regional structure of ATSIC was important, lots of people thought that the zones were too big to represent the diversity of Aboriginal people. Some people also worried that the way ATSIC made decisions did not match with community decision-making processes.

The current structure, the National Congress of Australia's First Peoples (Congress), began operation in 2010. Congress is a company owned and controlled by its members, who are representatives from different organisations as well as elected individuals. This recognises that peak organisations and service delivery bodies are important stakeholders in decision-making processes.

THE THREE CHAMBERS OF CONGRESS ARE MADE UP OF:

Forty delegates from each chamber are chosen to sit in the National Congress. Each chamber also elects two part-time directors who sit on the National Board. The two co-Chairs of the National Board are elected separately from a shortlist approved by the Ethics Council, which is open to any Aboriginal or Torres Strait Islander person who can demonstrate the necessary skills and attributes required to represent their people nationally.

In Canada, the Assembly of First Nations includes all the chiefs of member First Nations. The First Nations that participate in these national level organisations all have their own local processes for decision-making, and for choosing or electing their chief. The New Zealand Māori Council includes elected representatives from each Māori district and the National Maori Congress represents tribes. The National Congress of American Indians is made up of representatives from around 250 tribal governments in the United States.

REGIONAL AND NATION-BASED REPRESENTATIVE STRUCTURES

Aboriginal and Torres Strait Islander peoples have developed representative structures for their regions, which are often based on Aboriginal nations or language groups.

TRADITIONAL OWNER CORPORATIONS

In Victoria, Traditional Owner corporations hold those recognised rights on trust for the members on behalf of the broader community and make decisions about activities on country that impact on their rights. They also create development opportunities to improve the wellbeing of their communities.

Any decision to create a new representative structure for Aboriginal Victorians will need to take Traditional Owner corporations into account in its design.

One option is for a new representative structure to incorporate the interests of Traditional Owner groups. Another option is for a new representative structure to exist alongside Traditional Owner corporations and focus on matters outside the scope of those corporations like better services and other social and justice outcomes.

In Canada and the United States, nations or tribes have used their native nationhood (often recognised in a treaty or agreement) as a basis for forming tribal councils or governments. These usually represent a single tribe or main community, although in some cases these may join together to form a tribal council. The operations of these tribal governments also vary and often include a combination of traditional and settler governance arrangements. Important examples include the Nisga'a Lisims Government in Canada (www.nisgaanation.ca/) and the Navajo Nation Government in the United States (www.navajo-nsn.gov/).

PARLIAMENTARY REPRESENTATION

In Finland, Norway and Sweden separate, parallel Indigenous parliaments represent Sami peoples. Aotearoa New Zealand has also had designated Māori parliamentary representation since 1867, and currently has seven electorates (or seats) for Māori representatives elected by persons on the Māori Electoral Roll.

Australia has no special methods for electing Aboriginal people to our parliaments. This makes it unlikely that pursuing parliamentary representation would help to progress the negotiation of a treaty or treaties in Victoria. But seeking dedicated Aboriginal seats in the Victorian parliament could be a part of a treaty negotiation, and parliamentary representation could exist along with other representative structures in the community.

Who should be represented?

Representative structures have the challenge of representing everyone with a stake in the communities and issues at hand.

Gender balance is important for representation to be seen as legitimate, meaning that representative structures need to include both women and men in positions of authority. Some organisations (such as the National Congress) do this by requiring gender equality in each Chamber, and for the Directors and Co-Chairs.

Where organisations have not managed adequate gender representation they may find that separate women's organisations are also needed. For example the Native Women's Association of Canada (NWAC) and the Maori Women's Welfare League represent the interests of Indigenous women. In Australia the Ngaanyatjarra, Pitjantjatjara and Yankunytjatjara Women's Council provides services and representation to women from the region.

Younger people should also be included in representative structures, particularly as many decisions are likely to affect their futures. This needs to be balanced with the responsibility held by Elders and senior people in Aboriginal Victorian communities.

Different connections to land can also complicate representative structures. Traditional Owners may have custodial responsibility for certain areas, but most areas will also include other Aboriginal and Torres Strait Islander people as residents with historical or recent connections. This can be especially difficult in areas where native title has not been determined or where there are conflicts between Traditional Owner groups.

How should representatives be selected?

There are a number of different ways in which representatives can be selected. These include:

- > **Direct election** of representatives to the regional/national structure;
- > **Community nomination** of representatives to a regional or national structure;
- > **Nomination of members from peak bodies** or, alternatively, providing for the participation of these bodies in a purely advisory capacity;
- > **Selection** by a panel of eminent Aboriginal peers or Elders;
- > **Allocating dedicated positions** for particular groups such as stolen generations members, traditional owners, or youth;
- > Requiring **equal representation** of women and men; or
- > A combination of these methods.

Some organisations also include a code of ethics or an ethics council to ensure that representatives are of good character. For example the MPRA maintains a Code of Conduct to ensure that members of the regional governing body will carry out their duties 'with professionalism and integrity'. National Congress includes an Ethics Council that embeds ethical practice across all areas of the organisation and monitors the conduct of elections.

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