

Aboriginal Community Consultations on the Design of a Representative Body – Summary Report

Aboriginal Treaty Interim Working Group

Phase 2

June 2017

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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 Community 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.

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Summary report

1.1 Introduction

In 1930, Yorta Yorta man, William Cooper petitioned the King for a voice for Aboriginal people in the Federal parliament. On 28 May 2017, Aboriginal and Torres Strait Islander people released the Uluru Statement from the Heart calling for “the establishment of a First Nations Voice enshrined in the Constitution”.

In Victoria, conscious of this history and aware of national discussions, the first steps have already been taken to create a voice for Aboriginal people in Treaty negotiations. As a participant in the consultations noted:

“A first step in Treaty is that those who are invisible become visible”

The representative body will be the visible and tangible manifestation of the voice and aspirations of Aboriginal people in Victoria.

This report summarises the work undertaken by the Aboriginal people in Victoria (Aboriginal Community) to design a representative body from February through to April 2017.

The primary focus of this work has been to draw on the design principles agreed with the Aboriginal Community in 2016 to design an independent and representative voice for the Aboriginal Community to lead the development, with the State Government, of a Treaty Negotiation Framework.

This report summarises the hundreds of Aboriginal voices who have directly contributed to this stage of consultation. They have provided a clear message on the way in which they seek to be represented, the way in which they wish to elect their representatives and the processes they want designed to enable an effective representative body.

And, they have asked questions and explored the challenges that a representative body will face on this journey. These insights – reflecting the history and daily experience of Aboriginal people – will strengthen the final design of a representative body as it emerges in the remainder of 2017.

1.2 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 negotiate with. As a result Treaty negotiations cannot begin. Beginning in October 2016 the Aboriginal Treaty Interim Working Group (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 (Phase 1 Community Consultations). This journey continued throughout March and April 2017 (Phase 2 Community Consultations). Across the entirety of this journey up to 7,500 people have been engaged, either face-to-face or online.

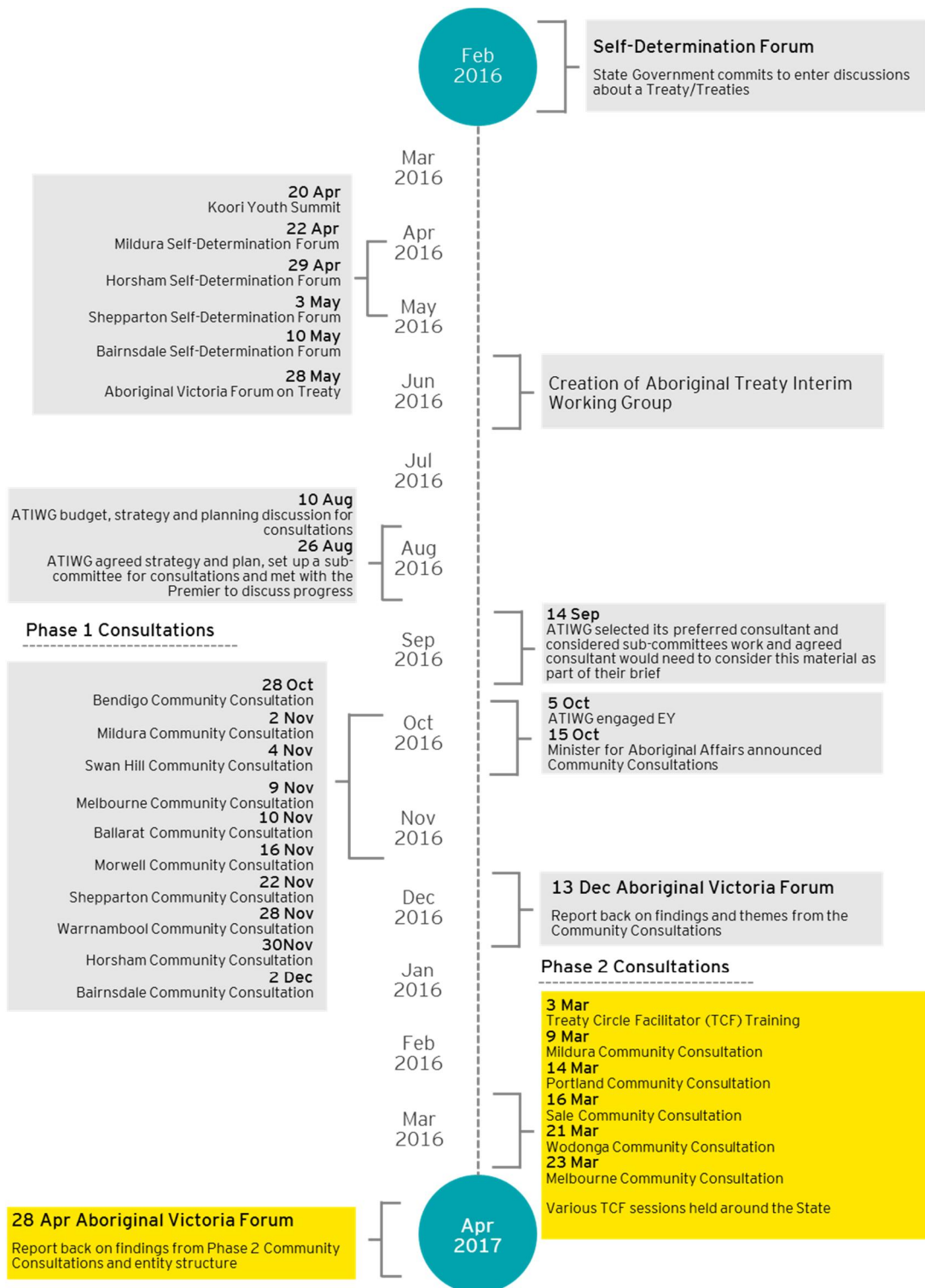
This journey has been guided by the voluntary Working Group. The Working Group's Terms of Reference requires the Working Group to consult with the Aboriginal Community on options for a representative body and to provide advice to both government and the Aboriginal Community on the next steps in the Treaty process. **They are not tasked with the negotiation of a Treaty.** We thank the Working Group for their commitment and wisdom in shaping this journey.

Our continued journey across the State was yet another step along the path to Treaty. **Its 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.

1.3 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



1.4 Community consultations

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 Community 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.

We held the Face to Face Community Consultations in six (6) regions across Victoria, they were:

- Echuca: Tuesday 7 March
- Mildura: Thursday 9 March
- Portland: Tuesday 14 March
- Sale: Thursday 16 March
- Wodonga: Tuesday 21 March
- 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 daytime 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 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.

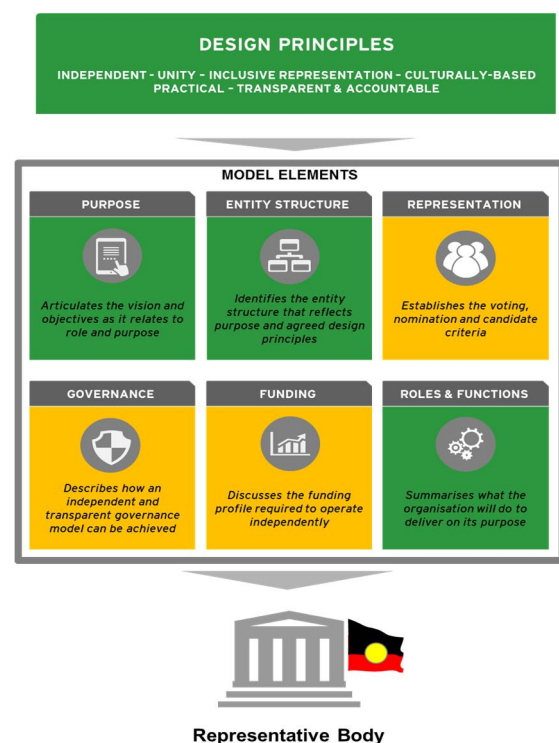
Participants at each consultation were asked to listen, ask questions and workshop the elements of representation through the questionnaire provided. The final part of the Face to Face Community Consultations was providing participants with the tools to go back to their family, friends and community 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-April 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 on the journey towards Treaty.

An Online Message Stick was created to complement 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 Message Stick provided participants with the chance to provide their ideas and opinions on the same topics that participants in the Face to Face Community Consultations discussed in their workshops.

1.5 Entity design

There are six model elements that we outlined 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 Phase 1 Community 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 2 outlines the interaction between the Design Principles and the model elements required to design and build an organisation. The Design Principles were seen as the base upon which a Representative Body can be designed and built, and the instructions for the entity design. The progress of the design of each of the six model elements is discussed in more detail in the main report for the Phase 2 Community Consultations. To date the design of over half of the model elements have been informed by the instruction provided by the Aboriginal Community. Figure 2 outlines which of the model elements have been completed (in green) or are yet to be finalised (in orange).

Figure 2. Model Elements



There are a number of ways to implement and design each model element. 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 Community Consultations.

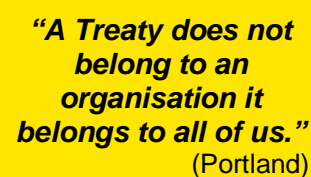
As an overarching principle, participants during the community consultations demanded their representative body be democratic and independent of government. The detail behind all Design Principles can be found in our report for the Phase 1 Community Consultations.

1.6 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. The 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, 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 in Figures 3, 4 and 5. For the detailed rating system and analysis please see our main report for the Phase 2 Community Consultations.



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

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.

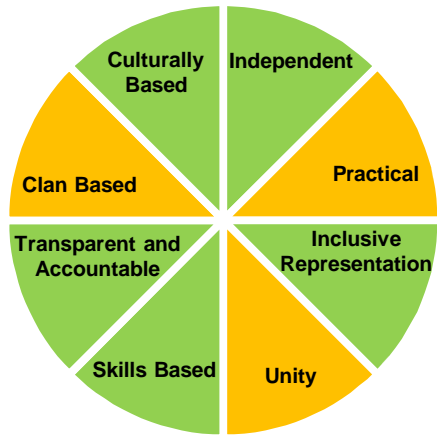


Figure 4: ORIC Corporation Analysis

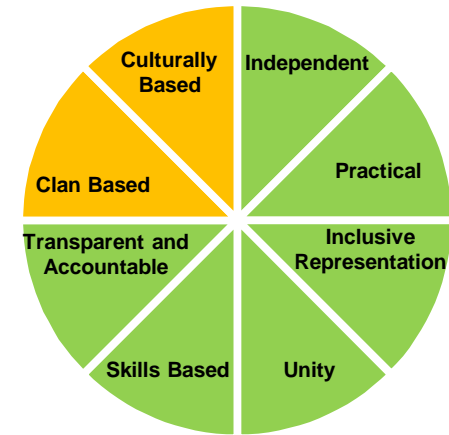


Figure 3: Company Limited by Guarantee Analysis

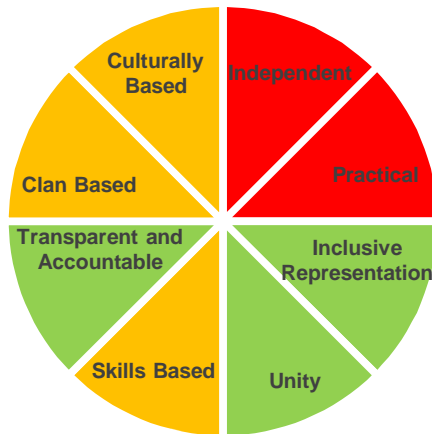


Figure 5: State Owned Company Analysis

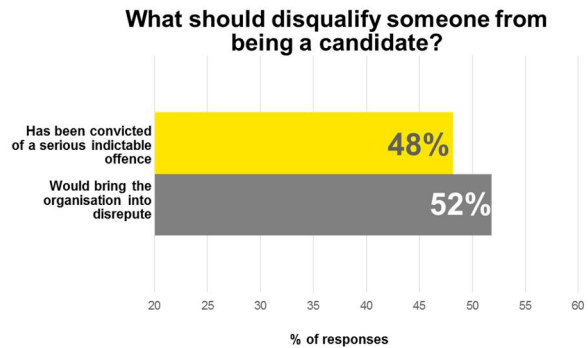
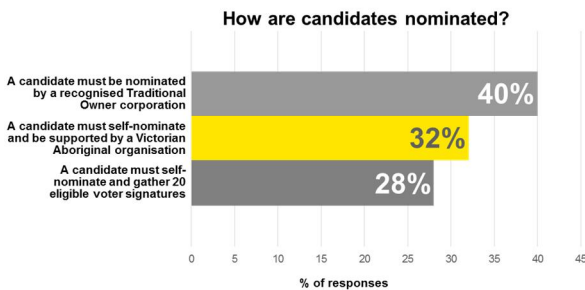
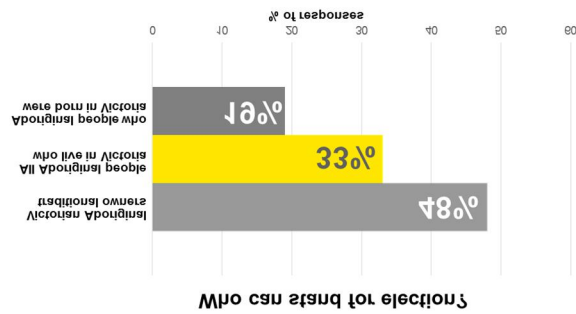
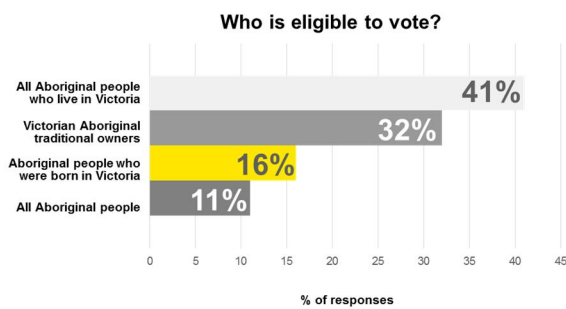
1.7 Representation

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 of the entity considers carefully *how* people are represented and *who* has a voice.

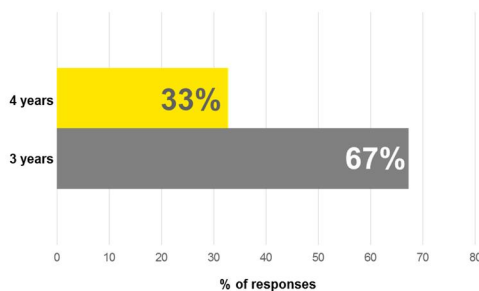
In support of this eight (8) questions were asked to explore three primary components of representation (please see the full report for discussion on the eight questions):

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

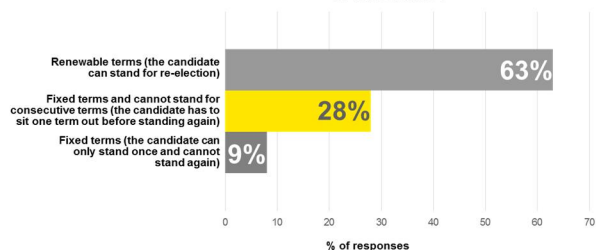
The data for the responses for each question are outlined below:

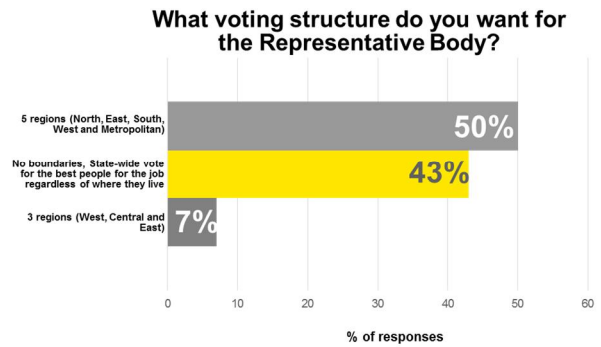
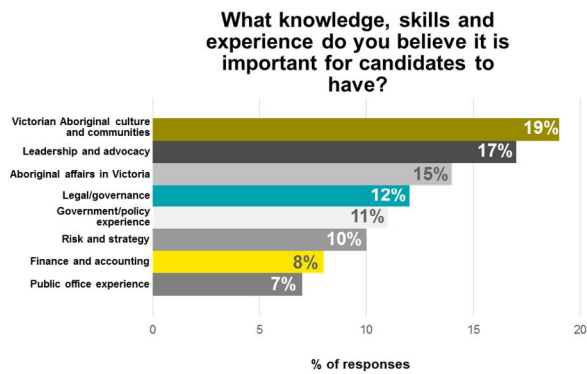


How long should candidate terms be?



Should candidate terms be fixed or renewable?





Each of the graphs outline the percentage figure that captures the frequency that each response to each answer for each question was selected across the total questionnaires we received. As a result of the Phase 2 Community Consultations Parts of the representation model element have been answered, however, due to the complexity surrounding representation further work needs to be done to finalise the candidate nomination process and the voting structures. These will need to be discussed further with the Aboriginal Community.

1.8 Next steps

As noted earlier, the representation and governance model elements require further detailed design to apply 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 phase of consultations to work through these remaining 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 elements of the Representative Body.

The Community Assembly reflects the Working Group's ongoing commitment to self-determination and will run across the second half of 2017.

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

Wodonga 2017

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