

ANZSOG CASE PROGRAM – TEACHING NOTE

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Making up for Lost Time? First Peoples-State Treaty-Making in Victoria

An ANZSOG Teaching Note by Harry Hobbs & Dani Larkin

Keywords: Treaty, Sovereignty, Self-Government, Uluru Statement, Aboriginal and Torres Strait Islander people

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Summary

In 2016, Victoria became the first government in Australia to formally commit to a treaty process with First Nations peoples. However, the historical absence of treaty in Australia meant the concept of a treaty was vague for many people, including government and Indigenous communities. A host of fundamental questions, such as what a treaty might contain or what a proper negotiation process might look like, were unclear or uncertain. The case study explores the slow and deliberate steps taken by the Victorian government as it listened to First Nations communities and built community support and the institutional architecture necessary for treaty talks. Key lessons from Victoria's experience will help inform other states and territories which have since begun their own treaty processes. The teaching note helps students explore and examine these issues.

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Learning Objectives

The case offers several different teaching opportunities on a variety of topics, including public administration, Indigenous affairs, public policy, and law. The case will enable students to:

- Formulate a better understanding of what make a Treaty different from other agreements and why Treaty is important to Aboriginal and Torres Strait Islander peoples'.
- Identify key challenges in developing a modern treaty process.
- Summarise and evaluate key milestones that have been achieved throughout the development of the Victorian treaty process.
- Understand why some Aboriginal and Torres Strait Islander peoples do not support the existing process in Victoria.
- Consider how the Victorian Treaty process relates to the national debate on constitutional recognition.

Course Audience

The audience for this case study may include:

- Postgraduate students enrolled in a Masters (or other postgraduate course) in Indigenous affairs, public administration, law, government, and related areas.
- Final year undergraduate students in any of the above areas.
- Public sector employees working in Indigenous affairs.

Suggested Teaching Approaches

1	Question for class discussion and potential assignment topic	What is a Treaty and how is it different from other agreements? There are many types of agreements between Indigenous peoples and governments in Australia and around the world. In Australia, there are agreements relating to land rights, joint management of national parks, and resource-benefit sharing agreements, among many others. The case study explains that these are important agreements that can provide real benefits to Aboriginal and Torres Strait Island peoples, but they are not treaties. Why is that? Students can examine why and how a treaty is different from other agreements. They can consider the conditions that a treaty must meet and explain where these conditions come from. The material below can support that work. - Crothers, Joanna. 2017. Treaty: Why do Victoria's Aboriginal People Want One and What Difference Will It Make? ABC News. 8 September. https://www.abc.net.au/news/2017-09-08/treaty-what-is-it-and-why-victoria-working-on/8779050 - Hobbs, H, and Williams, G. 2018. The Noongar Settlement: Australia's First Treaty. Sydney Law Review 40:1. - Mansell, M. 2016. Treaty and Statehood. The Federation Press.
2	Question for class discussion and potential assignment topic	What are some key challenges for developing a Treaty process? Treaty promises significant benefits to Indigenous and non-Indigenous Australians. However, these benefits will only accrue if treaty processes are successful. The historical absence of Treaty in Australia presents serious challenges to both negotiating treaty and for developing a treaty process. What are some of these challenges?

		Students can explore some of the key challenges faced by government decision-makers and Aboriginal Victorian leaders to developing and negotiating a modern treaty process. The material below can support that work. - Williams, G, and Hobbs, H. 2020. Treaty (2nd ed). The Federation Press. - Hobbs, H. 2019. A Queensland treaty: Current steps and potential challenges. <i>Alternative Law Journal</i> 45:1. 25 – 30. - Institute of Public Administration Australia, Northern Territory. 2019. The 2019 Garran Oration delivered by Professor Mick Dodson. https://vimeo.com/364953985 - Davis, M. 2018. Voice, Treaty, Truth. <i>The Monthly</i>. https://www.themonthly.com.au/issue/2018/july/1530367200/megan-davis/voice-treaty-truth#mtr
3	Question for class discussion	How has the Victorian treaty process empowered Aboriginal Victorians to lead the push for treaty? Aboriginal and Torres Strait Islander peoples must drive the process for treaty. What steps has the Victorian government taken to empower Aboriginal Victorians? Have they been limited to providing time and resources? Or has the government taken additional, novel, steps? - Aboriginal Treaty Working Group. 2016. Aboriginal Community Consultations on the Design of a Representative Body. Report. December. - Aboriginal Treaty Working Group. 2017. Aboriginal Community Consultations on the Design of a Representative Body. Report. June. - Gallagher, J. 2021. The Work of the Victorian Treaty Advancement Commission to Bring us Closer to Treaties in Victoria. In Hobbs, H, Whittaker, A, and Coombes, L (eds.) <i>Treaty-making: 250 Years Later</i>. Federation Press. 220-240.
4	Question for class discussion	What key Treaty institutions have been developed and how do they differ from ordinary legal bodies? Aboriginal Victorians are driving the treaty process forward, but Treaty requires the development and establishment of key legal institutions to facilitate and support negotiations. It is vital that Aboriginal Victorians perceive these institutions to be fair and equitable. If Treaty institutions are not fair or equitable it is unlikely that Aboriginal Victorians will take part in negotiations. The State government has recognised the need to think differently in designing and developing treaty institutions. Students can consider and explore the changes that government decision-makers have made to the ordinary process of government business? They can also reflect on how the institutions that have been established differ from ordinary legal bodies. The material below can support that work. - <i>Advancing the Treaty Process with Aboriginal Victorians Act 2018</i>. - Castan, M, Galloway, G, and Walker, S. 2022. A New Treaty Authority between First Peoples and the Victorian Government is a Vital Step Towards Treaty. <i>The Conversation</i>. 16 June. https://theconversation.com/a-new-treaty-authority-between-first-peoples-and-the-victorian-government-is-a-vital-step-towards-a-treaty-184739

		- Treaty Authority Agreement (First Peoples' Assembly of Victoria and the State of Victoria). 2022. - <i>Treaty Authority and Other Treaty Elements Act 2022</i>.
5	Question for class discussion	Why do some Aboriginal Victorians oppose the Treaty process? Aboriginal and Torres Strait Islander peoples have long called for a formal treaty or treaties to be negotiated. However, not all Aboriginal Victorians support the existing Victorian Treaty process. Students can reflect and consider on why this might be the case. What reasons do Aboriginal Victorians provide? Can changes be made to the Treaty process to secure their support? The material below can support these discussions: - Fryer, B. 2019. 'Farcical': Yorta Yorta Elders Council Rejects Treaty with Victoria. NITV. 26 June. https://www.sbs.com.au/nitv/article/2019/06/26/farcical-yorta-yorta-elders-council-rejects-treaty-victoria - Hayman-Reber, M. 2019b. No Trees, No Treaty: Protesters Continue to Amass at Djab Wurrung Site. NITV. 26 August. https://www.sbs.com.au/nitv/article/2019/08/22/no-trees-no-treaty-protesters-continue-amass-djab-wurrung-site - Maddison, S, Hurst, J, and Wandin, D. 2021. The Mess of Colonialism, the Complexity of Treaty. In Hobbs, H, Whittaker, A and Coombes, L (eds.) <i>Treaty-making: 250 Years Later</i>. Federation Press. 179-202. - Watson, I. 2018. Aboriginal Recognition: Treaties and Colonial Constitutions, "We Have Been Here Forever..." <i>Bond Law Review</i> 30:7
6	Question for class discussion and activity	In what ways can building community awareness and support assist with the development of the Victorian treaty process? This case study acknowledges that a treaty will only endure if both sides recognise its value. Appreciating this fact, the State government has sought to build community awareness and support for the Treaty process. It has launched two community education campaigns (in 2018 and 2021) that appear to be producing modest success. Stories of Aboriginal cultures, resilience and communities have been prominently featured in an interactive map in effort to get more Victorians to feel pride in our shared history. What are some of those stories? Students can separate into break-out groups to engage with the interactive map from the Deadly and Proud Victorian education initiative. The interactive map provides the Australian public with Aboriginal stories of history and culture. The word 'deadly' to Aboriginal people means strong, amazing, and awesome. It has been used in this campaign to describe both the storytellers and the stories they share. Students can be allocated one story to learn from on the interactive map by clicking on a highlighted spot on the map. Once students have read their allocated story's materials and watched the story's video, they can present their findings to the class. Students should provide the class with an overview of: • what the story is about; • what the issues are identified in the story; • what rights Aboriginal Victorians seek to protect; and

		- ways in which a Treaty might contribute to resolving such issues identified within the story. Students should also consider how Treaty and Truth in Victoria are interconnected. How does the Yoorook Justice Commission play a role in supporting and contributing to the Victorian treaty process? - Hobbs, H, and Williams, G. 2020. Treaty (2nd ed) The Federation Press. - Davis, M. 2006. Treaty, Yeah? The Utility of a Treaty to Advancing Reconciliation in Australia. <i>Alternative Law Journal</i> 31:127.
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Additional Resources

First Peoples Relations. (2022). Advancing the Victorian Treaty Process Annual Report 2020-21. <https://www.firstpeoplesrelations.vic.gov.au/advancing-victorian-treaty-process-annual-report-2020-21>

First Peoples' Assembly. (2022). Victorian Parliament passes historic Treaty legislation. First Peoples Assembly Victoria. <https://www.firstpeoplesvic.org/news/victorian-parliament-passes-historic-treaty-legislation/>

Hobbs, H. (2019). Treaty Making and the UN Declaration on the Rights of Indigenous Peoples: Lessons from Emerging Negotiations in Australia. *The International Journal of Human Rights*, 23:174.

Larkin, D, et al. (2022). Aboriginal and Torres Strait Islander Peoples, Law Reform and the Return of the States. *University of Queensland Law Journal* 41:35.

Feedback on Teaching Note use

To assist with continual improvement, if you've used this Teaching Note, we'd greatly appreciate your feedback and suggestions for improvement. To do so, please email caselibrary@anzsog.edu.au with the name of the case and your comments. Many thanks in advance.

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