

Victoria's First Nations treaty authority could be replicated across Australia, experts say

Queensland, the Northern Territory, South Australia and Tasmania also working towards treaties



Marcus Stewart (right), co-chair of the First Peoples' Assembly of Victoria, during a public hearing of the Yoorrook Justice Commission. The Victorian government has tabled legislation to create an Indigenous treaty authority

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Victoria's Indigenous treaty authority will set a precedent that other states could replicate – but sufficient and independent funding is needed for it to succeed, legal experts say.

The Andrews government on Tuesday tabled the legislation that will create the authority, after an agreement was struck with the First Peoples' Assembly of Victoria – the body elected by the state's Indigenous people to help develop a treaty.

The Australian-first body will act as an independent umpire to oversee treaty negotiations and help resolve disputes between First Nations communities and governments.

Harry Hobbs, a senior law lecturer at the University of Technology Sydney, said other jurisdictions would be “looking towards Victoria”.

“That doesn’t mean that every model will be exactly the same,” Hobbs said.

“It’s always going to be different, depending on the particular aspirations of each First Nations community.”

State governments in Queensland, the Northern Territory, South Australia and Tasmania are also working towards establishing treaties with First Nations communities.

The new Albanese government has also committed to enacting the 2017 Uluru Statement from the Heart, which called for the creation of a Makarrata Commission to oversee agreements between governments and First Nations people and a truth-telling process.

Hobbs said Victoria’s treaty process was closely aligned with the model used in Canada’s British Columbia, where a commission facilitates negotiations between governments and Indigenous communities.

“Like all marriages, it requires constant engagement, constant conversation, and productive relations to continue,” he said.

But Dr Virginia Marshall, a Wiradjuri Nyemba woman and legal researcher at the Australian National University, warned that statutory authorities like the Aboriginal and Torres Strait Islander Commission – abolished in 2005 – had lacked true independence due to governments having oversight of funding.

“We always seem to live in electoral cycles. And this is what we understand as Aboriginal and Torres Strait Islander people,” she said.

“Even in Indigenous entities or bodies, you also see the same deficits or problems faced by so-called independent authorities.”

The First Peoples’ Assembly co-chair, Marcus Stewart, told the Age in March the body wanted the authority to receive adequate funding that was not tied to election cycles.

But Marshall said she was “hopeful” that the legislation for Victoria’s authority would “lead into a federal government treaty”.

Victoria is currently the only state that is moving on both the treaty and truth components of the Uluru statement.

The Victorian Nationals leader and opposition spokesperson for Aboriginal affairs, Peter Walsh, told Guardian Australia last month he was prepared to work with traditional owners to “advance the treaty process”.

On Tuesday, Walsh said the Coalition had yet to form a view on the current bill.

Labor only has 16 MPs in the 40-seat upper house after the defection of the former government minister Adem Somyurek and his factional ally Kaushaliya Vaghela to the crossbench.

It means without the support of the opposition, the government now requires five crossbenchers to pass legislation.

The Animal Justice party MP Andy Meddick said he would support the bill, while the Sustainable Australia MP Clifford Hayes said he was awaiting with “great interest” viewing the legislation.

The Transport Matters MP Rod Barton, Reason party MP Fiona Patten and Greens leader Samantha Ratnam have expressed support for an independent treaty authority, though they wish to see the details of the bill before making a commitment.

“For years the Greens have stood alongside First Nations communities and advocated for a treaty,” Ratnam told Guardian Australia.

“We look forward to seeing the details of this bill and consulting with First Nations people to make sure their voices continue to be at the forefront of any treaty process.”

The Justice party and Liberal Democrats, which both hold two seats in the upper house, are also awaiting a briefing on the bill before making a decision.

