

Northern Territory

The First Nations of the Northern Territory were self-governing in accordance with their traditional laws and customs. First Nations peoples of the Northern Territory never ceded sovereignty of their lands, seas and waters.

[Barunga Agreement](#)

We want our own sovereignty recognised. Recognise our power, recognise who we are, recognise that we were here before any law that came and ruled all over us. I believe we can work together if we can sit down and negotiate things, but it hasn't happened ... It's been going on for 228 years now, when are you going to listen and sit down with us.

Liya-dhālinymirr Djambarrpuynu elder, [Yingiya Mark Guyula](#) MLA
for Nhulunbuy

We as a nation must come face to face with our dark and traumatic history. We must confront the impact of colonisation and begin the process of acknowledgment, recognition and healing... Anyone who has listened to me talk publicly knows that I am concerned with what I call 'unfinished business'. A Treaty is a good place to start with addressing this unfinished business.

[Professor Mick Dodson](#), inaugural NT Treaty Commissioner

It is right we lead this process because it is decent, because we are alive to Aboriginal culture like no other jurisdiction, but also because it is smart. Treaty – reconciliation, healing, empowerment – is fundamentally good for every Territorian.

[Chief Minister Michael Gunner](#)

What is Treaty?

Australian governments and First Nations communities across the continent have signed many agreements.¹ These include significant arrangements about land rights, native title, and co-management of resources. But these are not treaties. A treaty is a special kind of agreement.

¹ Material in this factsheet is drawn from George Williams and Harry Hobbs, *Treaty* (Federation Press, 2nd ed, 2020).

Treaty involves three elements: recognition of Indigenous people as polities, negotiation, and lastly a settlement of claims that provides for Indigenous self-government.

The conditions are important. A treaty is an instrument that is designed to improve the lives of First Nations communities and aims to secure the foundations for a just relationship between Indigenous peoples and the State.

No formal treaty has ever been signed between Aboriginal and Torres Strait Islander peoples and the British or Australian governments. However, in recent years, the Northern Territory has joined a number of other jurisdictions in making clear steps in this direction.

What is the history of Treaty in the Northern Territory?

First Nations peoples have inhabited the Northern Territory for at least 60,000 years. Over hundreds of years prior to European contact, First Nations peoples in the Territory traded with Macassan people, developing complex social and economic relations. Although the first settlement at Port Jackson was set up in 1788, British colonisation proceeded slowly in the Territory. It was not until 1869 that the first settlement was established.

In the absence of any negotiated agreement for their presence, the permanent arrival of the British had devastating consequences for Aboriginal peoples in the Territory; consequences that continue to be felt today. In an 1889 report on the Northern Territory, J.L. Parsons described the impact of colonisation:

The primary fact... is that the aborigines regard the land as theirs, and that the intrusion of the white man is a declaration of war, and the result is simply 'the survival of the fittest'.²

Over the first half of the twentieth century, governments essentially continued this war in other forms. Legislation and policy placed significant restrictions on the lives of First Nations peoples. It was during this period that the Stolen Generations commenced, with 'half caste' Aboriginal children removed from their families and placed in institutions. The *Bringing them Home* report concluded that this policy constituted 'genocide'.³

First Nations peoples did not die out. Indeed, despite the significant limits placed on their freedom, Aboriginal peoples were central to the economic development of the Territory. As the Queensland Chief Protector noted in 1929,

One fact is universally admitted, that the pastoral industry in the Territory is absolutely dependent upon the blacks for the labour, domestic and field, necessary to successfully carry on. If they were

² John Langdon Parsons, South Australian Government Resident, *1889 Report on the Northern Territory* (1889) 9.

³ Human Rights and Equal Opportunity Commission, *Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997) Ch 13.

removed, most of the holdings, especially the smaller ones, would have to be abandoned.⁴

In the 1960s, the determination of First Nations peoples for recognition of their rights and interests began to take hold. In 1963, the Yolngu community of Yirrkala drafted a Bark Petition calling for recognition of their land rights. The Parliament set up a committee to investigate the petition, but the government subsequently granted rights to a mining company to develop a bauxite mine. Disappointed by the governments' failure to listen, the Yolngu took the Australian government to Court. Although they lost, their tenacity led directly to the establishment of the Woodward Royal Commission, which recommended the introduction of a system of land rights across the Territory. Their determination inspired other First Nations communities. In 1971, the Larrakia petitioned the Queen, calling for land rights and political representation.

In the 1970s and 1980s treaty talk became more prominent. In 1979, the National Aboriginal Conference – an elected Indigenous representative body – passed a resolution calling for a 'Makarrata'. Makarrata is a Yolngu word meaning a coming together after a struggle. The term was chosen because it was seen as less politically explosive than a call for 'treaty'. The following decade, in 1988, Wenten Rubuntja (Central Land Council) and Galarrwuy Yunupingu (Northern Land Council) presented Prime Minister Bob Hawke with the 'Barunga Statement', calling for a Treaty. The prime minister committed to a Treaty by 1990. However, met by a hostile opposition, the Government shelved the idea in 1991.

The Northern Territory was granted self-government in 1978. Twenty years later, during debate over whether the Territory should become a State, First Nations peoples issued the Kalkaringi Statement. The Statement criticised the Northern Territory Government for failing to negotiate with Aboriginal people. The Statement called for self-government, recognition of Aboriginal structures of law and governance, land rights to be protected, effective levels of representation in parliament, and a guarantee of human rights. The referendum on Statehood was defeated by less than 4000 votes.

In recent years, treaty has been placed firmly on the political agenda. In September 2016, Yingiya Mark Guyula won the Northern Territory seat of Nhulunbuy with 1,648 votes. On 12 September 2016, the Chief Minister for the Northern Territory, Michael Gunner, declared that his Government would establish a subcommittee on Aboriginal affairs to 'drive public discussions on a treaty'.⁵

The Northern Territory and Land Councils agreed to establish a Treaty Working Group to develop a Memorandum of Understanding in March 2018. On 8 June 2018 the Northern Territory Government and all four Aboriginal land councils signed the historic agreement to begin treaty talks. The Barunga Agreement commits all parties to a three-year process to consult all Territorians to develop a process to negotiate a treaty, with the aim of achieving real change and substantive long-term benefits for Aboriginal people.

⁴ JW Bleakley, *The Aboriginals and Half-Castes of Central Australia and North Australia* (1929) 7

⁵ Helen Davidson, 'Northern Territory Labor Government Announces Majority Female Cabinet', *Guardian Australia*, 12 September 2016

<<https://www.theguardian.com/australia-news/2016/sep/12/northern-territory-labor-government-announces-majority-female-cabinet>>.

The signing of the Barunga Agreement was welcomed by all parties. However, First Nations peoples cautioned that this was only the first step in a long process. Francis Jupurrula Kelly, Chair of the Central Land Council, exclaimed:

Today we bounced the ball, but we don't want to stay the only players in the game. The next steps must be led by Aboriginal people across the Territory so that ... everyone can have their say.⁶

Where are we up to?

Kelly's caution is well warranted. The Northern Territory treaty process is building slowly, but it has suffered several setbacks. Professor Mick Dodson was announced the inaugural Treaty Commissioner in March 2019. In June 2020, following several months of consultation, the Treaty Commissioner released a Discussion Paper and proposed negotiation framework for Treaty in the Northern Territory. However, in June 2021, Professor Dodson resigned as Treaty Commissioner.

The Covid-19 pandemic also delayed consultation on the Discussion Paper as many Aboriginal communities in the Territory were locked down to prevent the spread of infection. In December 2021, Tony McAvoy SC was appointed interim Treaty Commissioner. A Final Report to the Minister for Treaty and Local Decision Making on the outcomes of the consultations and recommendations for the treaty framework was delivered in March 2022. We are now waiting to hear the government's response. The response may be delayed as Chief Minister Michael Gunner resigned from the top job in May 2022.

⁶ Lorena Allam, 'Historic Northern Territory Treaty Agreement Means "The Old Way is Finished"', *Guardian Australia*, 9 June 2018
<<https://www.theguardian.com/australia-news/2018/jun/09/historic-northern-territory-treaty-agreement-means-the-old-way-is-finished>>.