

## South Australia

*Even just with a mention of treaty, that opens up a different world for us to talk and put things in place, do all sorts of negotiations around how we structure our lives.<sup>1</sup>*

Ngarrindjeri man and leader, Major Sumner

*I think it's going to mean the satisfaction of acknowledging that Australia was basically invaded... And that the process of sitting down and negotiating a final outcome for us – because we've been totally dispossessed of everything – and coming up with a good solution that could move our community, children and families forward.<sup>2</sup>*

Chairman of Narungga Nations, Tauto Sansbury

*I affirm to each and every one of you here and the people across our state that I very much look forward for the first time in the history of our federation ... [to] actively delivering on a state-based voice, treaty and truth for the Aboriginal people of our state.<sup>3</sup>*

South Australian Premier Peter Malinauskas

## What is Treaty?

Australian governments and First Nations communities across the continent have signed many agreements.<sup>4</sup> 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.

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

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<sup>1</sup> Cited in Caroline Winter, 'Treaty: South Australian Government Enters Historic Discussions with Aboriginal Nations', *ABC News* (14 December 2016) <<https://www.abc.net.au/news/2016-12-14/south-australia-enters-historic-treaty-discussions/8120162>>.

<sup>2</sup> Cited in Caroline Winter, 'Treaty: South Australian Government Enters Historic Discussions with Aboriginal Nations', *ABC News* (14 December 2016) <<https://www.abc.net.au/news/2016-12-14/south-australia-enters-historic-treaty-discussions/8120162>>.

<sup>3</sup> Sumeyya Ilanbey, 'Labor Secures Stunning Election Win in South Australia, Marshall Concedes', *The Age* (19 March 2022) <<https://www.theage.com.au/politics/victoria/very-tough-very-close-very-long-night-sa-s-labor-opposition-cautiously-optimistic-20220319-p5a64m.html>>.

<sup>4</sup> Material in this factsheet is drawn from George Williams and Harry Hobbs, *Treaty* (Federation Press, 2<sup>nd</sup> ed, 2020).

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.

In South Australia, discussions between the South Australian Government and three Aboriginal nations aimed at finalising a Treaty first took place in late 2017. These discussions culminated in the Buthera Agreement between the Narungga Nation and the state government. However, after a change of government in 2018, treaty negotiations stopped. With a new government securing election in March 2022, it is expected that the treaty process will soon be revived.

### **What is the history of Treaty in South Australia?**

No formal treaty has ever been signed between Aboriginal and Torres Strait Islander peoples and the British or Australian governments. It could have been different in South Australia.

In 1832, George Arthur, the Governor of Van Diemen's Land (now Tasmania) noted that it was 'a fatal error ... that a treaty was not entered into with the natives' in the colony. Arthur recommended a treaty be signed before a colony was set up in South Australia.<sup>5</sup>

Unlike other areas of Australia, British colonisation of the area that is now known as South Australia was meticulously planned. The *South Australia Act 1834* legislated for the establishment of a settlement in South Australia. In 1836, [Letters Patent](#) establishing the Province of South Australia were issued. Significantly, the Letters Patent included recognition of the rights of the 'Aboriginal Natives' to live within the lands of the new Province.

Provided Always that nothing in those our Letters Patent contained shall affect or be construed to affect the rights of any Aboriginal Natives of the said Province to the actual occupation or enjoyment in their own Persons or in the Persons of their Descendants of any Lands therein now actually occupied or enjoyed by such Natives.

Despite the existence of the Letters Patent, the rights of Aboriginal people were ignored. Like the rest of the continent, no treaties were signed.

Nevertheless, the Letters Patent retain a moral strength. In 1966, the *Aboriginal Lands Trust Act* was passed by the South Australian Parliament. The first major recognition of Aboriginal land rights, the Act marked a return to the promises made in the unfulfilled Letters Patent. Other land rights acts, such as the *Pitjantjatjara Land Right Act*, have since been passed.

It was not until 2016, however, that a South Australian government committed to talking treaty with Aboriginal South Australians. In 2016, Kym Maher, the South Australian Minister for Aboriginal Affairs and Reconciliation, announced that the

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<sup>5</sup> Lyndall Ryan, *Tasmanian Aborigines: A History since 1803* (Allen & Unwin, 2012) 115.

state government would commit \$4.4 million over five years towards the establishment of up to 40 treaties across South Australia.

In February 2017, senior Kokatha and Mirning man, Dr Roger Thomas was appointed Treaty Commissioner for South Australia. The Treaty Commissioner had three functions:

1. Undertake broad consultation on a suitable framework to further Treaty negotiations between the South Australian Government and Aboriginal people of South Australia;
2. Provide advice to the Minister for Aboriginal Affairs and Reconciliation on a framework to Treaty negotiations, which could recognise the unique cultural identity of all Aboriginal people of South Australia; and
3. Facilitate conversations for a possible Treaty framework process between the Government and Aboriginal people of South Australia.

Dr Thomas led a two-stage consultation process.<sup>6</sup>

In April 2017, the Commissioner met with over 280 Aboriginal people around the state and received many written submissions. In an interim report, Dr Thomas noted a strong appetite for treaty. He also noted an apprehension within the Aboriginal community that any treaty process ‘should not be rushed’.<sup>7</sup> A second stage of consultation was held between May – July 2017. Overall, the Commissioner met in person with over 600 Aboriginal people and received more than 280 written submissions.

In July 2017, Dr Thomas released his final report, proposing a framework for treaty negotiations. The South Australian government adopted Dr Thomas’ framework, inviting Aboriginal nations in South Australia to submit expressions of interest to ‘enter a new relationship’ with the State.<sup>8</sup> Following this period, a newly established Aboriginal Treaty Advisory Committee recommended three Aboriginal nations — the Narungga, Adnyamathanha, and Ngarrindjeri nations — take part

In September 2017, the first negotiations in Australia between a government and an Indigenous nation explicitly understood as treaty discussions commenced between South Australia and the Ngarrindjeri nation.

In February 2018, the then Labor government signed the Buthera Agreement with the First Peoples of the Yorke Peninsula, the Narungga nation, committing the parties to a three-year process of negotiations.<sup>9</sup> That same month, the Ngarrindjeri Regional

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<sup>6</sup> This material is drawn from Harry Hobbs and George Williams, ‘Treaty-Making in the Australian Federation’ (2019) 43(1) *Melbourne University Law Review* 178.

<sup>7</sup> Dr Roger Thomas, *Talking Treaty* (Office of the Treaty Commissioner, 21 July 2017) 5.

<sup>8</sup> South Australian Native Title Services, ‘Government Has Treaty Talks with Three SA Aboriginal Nations’, (Summer 2018) *Aboriginal Way* 5.

<sup>9</sup> Lucy Kingston, ‘SA Government Signs Buthera Agreement with Narungga Nation’, *South Australian Native Title Services* (17 February 2018)

<<https://www.nativetitlesa.org/aboriginalway/sa-government-signs-historic-buthera-agreement-with-narungga-nation>>, archived at <<https://perma.cc/645V-XYX3>>.

Authority and the State government signed an agreement noting the parties ‘wish to strengthen the[ir] relationship’, the State’s ‘[desire] to enter into a treaty’, and obligating the State to ‘promote a legislative structure that enables the parties to enter in the treaty negotiated between them’.<sup>10</sup>

These negotiations were abandoned by the incoming Liberal government in June 2018. Premier Steven Marshall declared state-based treaties ‘expensive gestures’ and announced that his government would abandon the process, because treaties ‘should be negotiated at the federal level, not the state level’.<sup>11</sup>

### **Where are we up to?**

In March 2022, the Labor party secured government in the South Australian election. The new government has recommitted to the treaty process. We now wait to watch the next steps.

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<sup>10</sup> *Negotiating a Treaty between the Ngarrindjeri People and the State of South Australia*, signed 16 February 2018

<sup>11</sup> Michael Owen, ‘Aboriginal People Failed by “Expensive Gesture” Treaties’, *The Australian* (11 June 2018) <<https://perma.cc/Y9BY-YU2Q>>.