TREATY IN AUSTRALIA

WHAT IS TREATY?

THE HISTORY OF TREATY IN AUSTRALIA

TREATIES ELSEWHERE

WHERE ARE WE UP TO?

THE STATES AND TERRITORIES

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What is Treaty?

Treaty is an agreement.

Treaty is a legally binding settlement involving two or more parties, nations, groups, organisations or interests.

Treaty is reached after a process of negotiation and not merely consultation. Consultation can be understood as a one-way process. Negotiation, on the other hand, involves parties coming to the table as equals working towards a mutually beneficial resolution.

Treaty can also be called a Settlement, Agreement, Pact, Accord, Covenant or Compact. Regardless of name, they all bind parties together in agreement, outline their rights and obligations, and define the 'rules' of their relationship.

Throughout history, nations have formed treaties with the Indigenous peoples of the lands they colonised. New Zealand, Canada and the United States are examples. Australia as a nation, however, has never 'treated' with its First Nations.

Additional Online Resources
Click to view resource online (if supported)

- SBS, Explainer: What is a Treaty?
- United Nations Declaration on the Rights of Indigenous Peoples articles 3, 4, 5, 6, 19, 20, 26, 27, 28, 37, 38
- Aboriginal Victoria, What is a treaty?
- NITV, Treaty for Dummies

“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, NT Treaty Commissioner

Photo: Mick Dodson, now NT Treaty Commissioner, pictured in 2001 with the Sea of Hands.
Since 1788, Treaty has been a glaring question mark for the continent of Australia. There were an estimated 750,000 Aboriginal and Torres Strait Islander peoples spread out across Australia, from over 400 separate nations and as many language groups. Pre-Federation, there was very little discussion or consideration of Treaty with the First Nations peoples of Australia.

In 1835, in an isolated case, John Batman approached the Wurundjeri peoples with a contract to ‘purchase’ land around what is now Melbourne in Port Phillip Bay. Batman made a tenuous claim over a significant portion of the land of the Kulin nation. After, the Batman treaty was declared invalid by NSW Governor Bourke on the basis that the British Crown claimed to own all of Australia and that only it had the authority to sell or distribute land.

During the 1930s, William Cooper and other leaders from the Aborigines Progressive Association collected 1,814 signatures petitioning Prime Minister Joseph Lyons and King George VI to intervene on behalf of Australian Aborigines: ‘for the preservation of our race from extinction and to grant representation to our race in the Federal Parliament.’

In 1938, both the Aborigines Progressive Association and the Australian Aborigines’ League declared 26 January a ‘day of mourning’ for Aboriginal people.

In 1948, The Commonwealth Nationality and Citizenship Act granted Australian citizenship to all Australians, including Aboriginal and Torres Strait Islander peoples, for the first time. However, at the State level, Aboriginal and Torres Strait Islander peoples still were subject to legal discrimination.
The History of Treaty in Australia

1962
In 1962, the Commonwealth Electoral Act was amended to enable all Aboriginal and Torres Strait Islander peoples to vote.

1963
In 1963, clan groups living around Yirrkala presented Parliament with the Yirrkala Bark petitions, written in both Yolngu Matha and English. The petition protested the excision of their lands and the granting of bauxite mining leases without consultation.

1965
In 1965, a group of University of Sydney students, including Charlie Perkins, embarked on the Freedom Rides around regional New South Wales. The Freedom Rides aimed to bring national and international attention to the racism and the poor living conditions of Aboriginal people in country New South Wales.

1967
In 1967, Australians decided (over 90% voted ‘yes’) in a referendum to give the Federal Government power to make laws for Aboriginal and Torres Strait Islander peoples and include them in the Census.

1972
In January 1972, four Aboriginal men established The Tent Embassy outside Parliament House in Canberra. The Tent Embassy is a powerful symbol of protest against successive Australian governments for their approach to Indigenous issues and to stand for Aboriginal sovereignty and their right to self-determination. In the same year, the Department of Aboriginal Affairs was created.

1975
In 1975, The Australian Parliament passed the Racial Discrimination Act to help ensure that all Australians, including Aboriginal and Torres Strait Islander peoples, were treated equally and enjoy the same opportunities.

1985
In 1985, Uluru was returned to its Traditional Owners.
The History of Treaty in Australia

1988

In 1988, Galarrwuy Yunupingu AM and Wenten Rubuntja AM presented The Barunga Statement to Prime Minister Bob Hawke. The Barunga Statement was a declaration of the aspirations of ‘the Indigenous owners and occupiers of Australia’ and a request to Government for recognition, and the granting of full civil, economic, social and cultural rights. Hawke responded with a promise that a Treaty would be negotiated during his term of Parliament. Hawke was unable to fulfil his promise to First Nations.

2009

In 2009, Australia endorses the 2007 United Nations Declaration on the Rights of Indigenous Peoples two years after it being adopted by the General Assembly. Australia was one of only four nations that originally voted against The Declaration.

Additional Online Resources

Click to view resource online (if supported)

- SBS, Explainer: What is a Treaty?
- United Nations Declaration on the Rights of Indigenous Peoples articles 3, 4, 5, 6, 19, 20, 26, 27, 28, 37, 38
- NITV, Batman Treaty Explainer (Links to Facebook)
- State Library of Victoria, Batman’s Treaty
- ABC Radio National, Possession and Batman’s Treaty
- Reconciliation Australia, Reconciliation Timeline
- AIATSIS, Yirrkala Bark Petitions 1963
- AIATSIS, Commemorating the Freedom Ride
- National Museum of Australia, Defining Moments Aboriginal Tent Embassy
- AIATSIS, The Barunga Statement

“We, the Indigenous owners and occupiers of Australia, call on the Australian Government and people to recognise our rights ... And we call on the Commonwealth Parliament to negotiate with us a Treaty recognising our prior ownership, continued occupation and sovereignty and affirming our human rights and freedom”

1988 Barunga Statement

Photo: Galarrwuy Yunupingu AM and Wenten Rubuntja AM present Prime Minister Bob Hawke with the Barunga Statement in 1988.
The Treaty of Waitangi is considered one of the founding documents of New Zealand. The Treaty of Waitangi was signed on 6 February 1840 by Maori chiefs and representatives of the British Crown. It was created amidst conflict between the Maori population and British subjects who were living and working in New Zealand.

The proposed solution was to appoint Britain as 'overseer' and to unite all under one law. The Treaty was not drafted as a constitution or a statute but rather as a broad statement of principles upon which the parties founded a nation state and agreed to establish a system of government. The Treaty was written in English then translated into Maori. The slightly different wording of the two versions has caused some contention. There is also debate over whether the Treaty granted Britain sovereignty over New Zealand.

In Canada, treaties provide a framework for Indigenous and non-Indigenous peoples to share land, resources and power, whilst respecting and maintaining their differences. Treaties in Canada are constitutionally recognised agreements between Indigenous peoples, the Crown (the British and later, Canadian governments) and often provinces and territories. These Treaties outline rights, obligations and benefits for each party.

In Canada, treaties with Indigenous peoples refer to both historic treaties with First Nations and modern treaties with Indigenous groups which are also known as comprehensive land claim agreements. Treaties in Canada are protected under the 1982 Constitution Act section 35 which states that 'Aboriginal and treaty rights are hereby recognised and affirmed'. Treaties are also commemorated on Treaty Days which Canadians celebrate in many provinces.
Treaties have defined the relationship between Native American Nations and the United States of America from the time of British settlement. Prior to independence, from 1533 to 1789, the administrators of British colonies treated with the Native American tribes as equal sovereigns, according them a status equivalent to that of the colonial governments.

The first Treaty between the US and an American First Nation was the 1788 'Treaty with the Delawares'. However in 1871, nearly 100 years of Treaty making ended when the House of Representatives ceased recognition of American First Nations as independent sovereigns with whom the US could treat with. Treaties were to a large extent used by the US to displace First Nations Americans from their lands and oftentimes, the US has not honoured the agreements contained within those Treaties.

**USA**

**Additional Online Resources**

Click to view resource online (if supported)

- SBS, Explainer: What is a Treaty?
- Agreements, Treaties and Negotiated Settlements Project
- NITV, Waitangi Day – What does it mean and why should it matter to you?
- Government of Canada, Treaties and agreements
- The Canadian Encyclopedia, Treaties with Indigenous Peoples in Canada
- US National Archives, American Indian Treaties
The Uluru Statement from the Heart is the most recent call for self-determination from Australia’s First Nations Peoples. The bipartisan Referendum Council convened the First Nations National Constitutional Convention at Uluru – Australia’s ‘red heart’ – to discuss constitutional reform and recognition in May 2017. This historic event culminated in the Uluru Statement from the Heart.

*Makarrata* is a Yolngu word that can be understood as meaning ‘the coming together after a struggle’. It is through this concept of *Makarrata* that Aboriginal and Torres Strait Islander leaders from across Australia envisaged ‘a fair and truthful relationship with the people of Australia’ and a brighter future for First Nations based on the principles of justice and self-determination. A Makarrata Commission, proposed in the Uluru Statement from the Heart would ‘supervise a process of agreement-making between governments and First Nations and truth-telling about our history.’ Through *Makarrata*, it is hoped that Australia can finally settle its differences, renew its conception of itself, and reconcile the relationship between First Nations and non-Indigenous Australians.

The Turnbull Government after ‘careful consideration’ rejected the proposals set forth by the Uluru Statement and those endorsed by the Final Report of the Referendum Council.

The Morrison Government has promised to allocate $7.3 million to the comprehensive ‘co-design’ of models to improve local and regional decision-making and options for constitutional recognition.

"Our Aboriginal and Torres Strait Islander tribes were the first sovereign Nations of the Australian continent and its adjacent islands and possessed it under our own laws and customs... With substantive constitutional change and structural reform, we believe this ancient sovereignty can shine through as a fuller expression of Australia’s nationhood ... We seek a Makarrata Commission to supervise a process of agreement-making between governments and First Nations and truth-telling about our history”

2017 Uluru Statement from the Heart
The Northern Territory Government recognises that the First Nation Peoples of the NT never ceded sovereignty of their lands, seas or waters and previously self-governed in accordance with their traditional laws and customs.

The NT Government has committed to commencing treaty discussions with First Nations in the Territory through the Barunga Agreement (2018). The NT Government understands that there may be more than one Treaty and more than one Aboriginal group that is a party to that Treaty (or treaties).

A Treaty Commissioner (Professor Mick Dodson) has been appointed to consult with Aboriginal people in the NT to develop a framework for Treaty negotiations.

The Victorian Government recognises that the Aboriginal peoples of Victoria never ceded sovereignty and that Treaties are necessary to address the wrongdoings of the past. Treaties are an opportunity to redefine the relationship between Aboriginal and non-Aboriginal Victorians.

The Treaty Advancement Commissioner (Jill Gallagher AO) is currently speaking with Aboriginal peoples about their aspirations in community gatherings across the state. The role of the Treaty Advancement Commissioner has not been to negotiate treaty but rather to maintain the momentum of the treaty process.

The Treaty Advancement Commissioner is also responsible for establishing the First Peoples' Assembly of Victoria, whose role is to lay down the 'ground rules' for Treaty negotiations. Victoria is responsible for Australia’s first ever treaty law, Advancing the Treaty Process with Aboriginal Victorians Act 2018.
The South West Native Title Settlement (the Settlement) in Western Australia is the largest native title settlement in Australian history and is considered by many as 'Australia's First Treaty'. The Settlement is the resolution of Noongar native title claims in the South West of WA, encompassing approximately 200,000 square kilometres of land and affecting an estimated 30,000 Noongar people.

The Settlement resolves native title claims for perpetuity in exchange for a package of benefits including recognition through an Act of Parliament, a perpetual Noongar Boodja Trust, Land Access to certain crown lands for customary activities, the Co-operative and Joint management of National Parks and the South West Conservation Estate, and funds and land for the development of a Noongar Cultural Centre.

The Settlement enables the Noongar people to join together, manage and 'control their own destiny, and build a solid future for generations to come.'

In February 2018, the former South Australian Government signed the Buthera Agreement with the Narungga nation, the First Peoples of the Yorke Peninsula.

The Buthera Agreement is the first significant step towards a state-based Treaty in SA and was the culmination of a year-long consultation process with Aboriginal South Australians followed by discussions between the government and three Aboriginal nations on Treaty.

The Buthera Agreement is the result of the former SA Labor Government working together with the Narungga nation and provides much needed resources to build the latter’s capacity to fully realise the benefits of the agreement and have greater input in key policy areas such as Health, Justice and Education. However, the recently elected Marshall Liberal Government has decided not to pursue Treaty as a policy direction and Treaty discussions have stopped.
The States and Territories

AUSTRALIAN CAPITAL TERRITORY

In 2018, the Australian Capital Territory Minister for Aboriginal and Torres Strait Islander Affair declared the ACT government was open to talking Treaty with the First Nations of the Canberra region.

The Minister has spoken with community leaders, including individual Traditional Owners and members of the ACT Aboriginal and Torres Strait Islander Elected Body (ATSIEB) about whether a state-based Treaty in the ACT should be pursued.

The ACT Government acknowledges the Ngunnawal people as traditional custodians of the Canberra region and that the region continues to hold cultural significance.

The ACT Aboriginal and Torres Strait Islander Agreement 2019-2028 sets out the direction of Aboriginal and Torres Strait Islander Affairs in the ACT over the next ten years. The Agreement is committed to self-determination as the guiding principle in achieving equitable outcomes for Aboriginal and Torres Strait Islander peoples in the territory. Self determination is recognised as an 'ongoing process of choice to ensure that Aboriginal and Torres Strait Islander communities are able to meet their social, cultural and economic needs'.

QUEENSLAND

In July 2019, the Queensland Government announced it was commencing its journey towards Treaties with the First Nations of Queensland.

The QLD Government signed the Joint Statement of Commitment as part of the Tracks to Treaty - Reframing the relationship with Aboriginal and Torres Strait Islander Queenslanders initiative. The initiative promotes and supports self-determination, truth-telling, local decision-making and better life outcomes for the First Nations Peoples of QLD.

The QLD Government believes the process will benefit all Queenslanders by furthering reconciliation, ‘foster a shared pride in Aboriginal and Torres Strait Islander culture and help heal the wounds of the past.’

TASMANIA

On National Sorry Day 2019, the leader of the Tasmanian Greens reiterated calls for Treaty with the First Nations of Tasmania. The Tasmanian Premier has promised to 'reset the relationship' with Aboriginal Tasmanians but to date, very little progress has been made, particularly in regards to land returns and Treaty.
NEW SOUTH WALES

In January 2018, the former New South Wales Opposition Leader stated Labor would negotiate a Treaty recognising traditional Indigenous ownership of NSW if elected to government in 2019. It was hoped that a Treaty would acknowledge the wrongs of the past, 'put things right for the future' and provide a ‘truthful and honourable basis for our reconciliation with the state's first people.'

However, the current NSW Government, to date, has not expressed any intentions towards advancing the Treaty process.

Additional Resources - "The States and Territories"

Click to view resource online (if supported)

**Northern Territory:**
- Northern Territory Treaty Commission
- NT Government news, Barunga Agreement 2018

**Victoria:**
- Advancing the Treaty Process with Aboriginal Victorians Act 2018
- Aboriginal Victoria, 'Treaty Legislation'

**Western Australia:**
- Noongar People, 'Settlement Agreement'

**South Australia:**
- The Guardian, 'South Australia halts Indigenous treaty talks as premier says he has 'other priorities'
- Native Title SA, Buthera Agreement

**Australian Capital Territory:**
- NITV News, 'Real outcomes' needed for clan groups to support any ACT treaty process'
- ACT Government, Agreement 2019-2028
- ACT Aboriginal and Torres Strait Islander Agreement 2019-2028

**Queensland:**
- Queensland Government, Joint Statement 'Historic signing of 'Tracks to Treaty' commitment'
- Queensland Government, 'Path to Treaty'
- ABC News, 'Queensland Government announces 'conversation' to formalise Indigenous treaty'

**New South Wales:**
- Sydney Morning Herald, 'About the future and the past': NSW Labor to ink Treaty with Indigenous Australians
- Labor 2019 Election Platform: 'A Fair Go for First Nations People'

**Tasmania:**
- Tasmanian Greens, Unfinished Business: Time to Treaty
“What Aboriginal people ask is that the modern world now makes the sacrifices necessary to give us a real future. To relax its grip on us. To let us breathe, to let us be free of the determined control exerted on us to make us like you... recognise us for who we are, and not who you want us to be. Let us be who we are – Aboriginal people in a modern world – and be proud of us.

Acknowledge that we have survived the worst that the past had thrown at us, and we are here with our songs, our ceremonies, our land, our language and our people – our full identity. What a gift this is that we can give you, if you choose to accept us in a meaningful way”

Referrendum Council member, Galarrwuy Yunupingu in his essay ‘Rom Watangu’