TREATY IN NEW SOUTH WALES

WHAT IS TREATY?
HISTORY OF TREATY IN NEW SOUTH WALES
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What is Treaty?

Treaty is a legally binding agreement that has come through acknowledgment, discussion, and negotiation, concluding with substantive outcomes for each party.

Treaty formalises the relationship between the parties and brings binding obligations on them.

Each Treaty can be different in its characteristics as Aboriginal and Torres Strait Islanders peoples in NSW will have their own varied expectations and requirements that need to be met.

An aspect that is relevant for First Nations Peoples in formulating treaties is the right to self-determination, which involves the right to freely determine their political status and freely pursue their economic, social and cultural development. This includes the right to autonomy and self-governance.

Other nations have developed and formed Treaties with the Indigenous peoples including the United States, Canada and New Zealand. Australia is currently still in its early stages of treaty making, opening the conversation for the nation.

“Treaty can be about completing us. This is our unfinished business. It is about finally and truly expunging the stain of terra nullius – the belief that this was an empty land free for the taking.”

Author, journalist, broadcaster,
Wirradjuri man, Stan Grant

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New South Wales is the site of Australia’s oldest European settlement. In 1770, Captain James Cook and the Endeavour arrived in Botany Bay with instructions from the British Crown to annex Australia with the ‘consent of the natives’.

On 26 January 1788, Captain Arthur Phillip led the First Fleet into Port Jackson and established a penal colony for British convicts. ‘Contact’ between colonisers and First Nations Peoples in what was to become New South Wales has taken place since the arrival of the First Fleet. Today, NSW has the largest population of First Nations peoples in the country. However, historically, and to date, the relations between parties in NSW has not been honoured with a Treaty or agreement of any kind.

In 1965, a group of University of Sydney students, including Charlie Perkins, embarked on the Freedom Ride around regional New South Wales. At the time, many Australians believed that racism was a problem in other countries, such as South Africa and the USA, but not here. The Freedom Ride awakened Australians to the reality of racism and the living conditions of Aboriginal people in regional NSW. The Freedom Ride is considered by some as ‘the beginning of resetting the relationship between Aboriginal people and non-Aboriginal people in contemporary Australia’.

In 1992, Paul Keating delivered his famous Redfern Speech in Sydney to launch the celebration of the 1993 International Year of the World’s Indigenous People. It was the first time in settler history that an Australian political leader had admitted to the devastating impact of white settlement on First Nations Peoples, ‘their failure’ and the ensuing ‘devastation and demoralisation’ brought upon Aboriginal and Torres Strait Islander communities.
In 2010, the NSW Constitution was amended to include recognition of Aboriginal people as the ‘first people and nations’ of this state: ‘Parliament, on behalf of the people of New South Wales, recognises that Aboriginal people, as the traditional custodians and occupants of the land in New South Wales: (a) have a spiritual, social, cultural and economic relationship with their traditional lands and waters, and (b) have made and continue to make a unique and lasting contribution to the identity of the State.’

“I think when it comes to treaty we need to be really quite lateral with it. I mean the Noongyar agreement in Western Australia is a treaty in every way except by name. Land use agreements are a form of a treaty... I think the most important point on this one is for Australians to get used to the idea of treaty. It’s well established in many other first world nations with a colonial history. It’s not a scary thing. It’s an agreement.”

Shadow Minister for Indigenous Australians, Linda Burney MP

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Where are we up to?

The New South Wales Aboriginal Land Council (NSWALC) is the State’s peak representative body in Aboriginal Affairs, protecting the interests and furthering the aspirations of its members and the broader Aboriginal community. In 2017, NSWALC announced that the negotiation of a treaty was one of the key priorities of its five-year Strategic Plan (2018-2022).

NSWALC councillors participated in the First Nations Constitutional Convention that culminated in the historic Uluru Statement from the Heart. NSWALC seeks to ‘fulfil the aims of (that) statement in NSW by working to secure a process that will culminate in a Treaty or Treaties for Aboriginal people’.

Specifically, NSWALC called for both sides of State politics to progress the signing of a treaty between government and the First Peoples of New South Wales, stating that ‘working together towards a Treaty presents an opportunity to heal the past’ and a ‘practical way for New South Wales to deepen Aboriginal participation in the economy and the broader community.’

"NSWALC Councillors participated in the forum that produced the Uluru Statement from the Heart. We seek to fulfil the aims of the statement in NSW by working to secure a process that will culminate in a Treaty or Treaties for Aboriginal people."

NSWALC Five Year Strategic Plan

In March 2019, just prior to the state election, the major parties released their policies regarding Aboriginal affairs, on the matter of Treaty:

The NSW Liberals and Nationals parties suggested Treaty is best introduced at the federal level stating that ‘as a Coalition, we have made it pretty clear that we think discussions and considerations around Treaty should happen at a Federal level ... that’s something that we've been quite open about’.
Where are we up to?

NSW Labor, in addition to pledging a suite of policies investing in education, culture, empowerment and reducing the population of Indigenous people in prison - promised a Treaty process in consultation with Indigenous leaders and Elders. Shadow Minister for Aboriginal Affairs and Labor MP David Harris stated that the party was ‘fully committed to that (Treaty) and what we want to do is form a partnership with Aboriginal people to determine what that looks like and how that works’.

“It’s time for our state to begin the path to a treaty, and to put genuine reconciliation with the Aboriginal peoples of NSW back on the agenda.”

NSW Opposition Leader, Jodi McKay

The NSW Greens announced a 5-Point First Nations Justice package based on ‘Treaties, de-incarceration, economic empowerment and care for country… and grounded in First Nations self-determination’. The plan promised ‘Treaties now with each of the First Nations peoples in NSW.

Since the election, the returned Coalition Government have not raised any new interest in pursuing a state-based treaty process.

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6. NSW Aboriginal Land Council, New South Wales Aboriginal Land Council (NSWALC) has renewed calls for Treaty during discussions at a Black Parliament at the NSW Parliament House
7. NITV, This is where the key players stand with their Indigenous policies ahead of NSW election
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12. NITV, This is where the key players stand with their Indigenous policies ahead of NSW election
“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”

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