

Factsheet

Treaty in the Northern Territory 2023

ANTAR



Treaty in the Northern Territory

“First Nations peoples of the Northern Territory never ceded sovereignty of their lands, seas and waters.”¹

Barunga Agreement 2018

“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.”²

Liya-dhālinymirr Djambarrpuyngu 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.”³

Professor Mick Dodson, inaugural NT Treaty Commissioner

¹ Northern Land Council, Central Land Council, Anindilyakwa Land Council and Tiwi Land Council, ‘The [Barunga Agreement](#): Memorandum of Understanding & Joint Statement’, *Government of the Northern Territory*, no. 1 (2018): 15.

² Calla Wahlquist, ‘[Treaty push should replace Indigenous Recognise campaign, says Yolngu leader](#)’, *The Guardian*, March 11, 2016, 1.

³ National Institute of Vocational Training, ‘[Unfinished business: Mick Dodson appointed NT treaty commissioner](#)’, *SBS News*, February 18, 2019, 1.

“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.”⁴

Chief Minister Michael Gunner

What is Treaty?

Australian governments and First Nations communities across the continent have signed many agreements.⁵ 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. The conditions are important. A treaty is an instrument that is meant to reconcile the past with the present and for a better future. A Treaty should also improve the lives of First Nations communities and aim to secure the foundations for a just relationship between First Nations 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.

⁴ Lorena Allan, [‘Historic Northern Territory treaty agreement means ‘the old way is finished’](#), *The Guardian*, June 9, 2018, 1.

⁵ Material in this factsheet is drawn from George Williams and Harry Hobbs, [Treaty](#) (Federation Press, 2 nd ed, 2020): 384.

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.’”⁶

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’.⁷

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,

⁶ John Langdon Parsons, [South Australian Government Resident, 1889 Report on the Northern Territory \(1889\)](#) 9.

⁷ 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.

“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 removed, most of the holdings, especially the smaller ones, would have to be abandoned.”⁸

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. In 1976 the *Aboriginal Land Rights (Northern Territory) Act* was passed with historic bipartisan support.⁹ It was the first legislation that allowed for First Nations peoples to claim land title if traditional association could be proven.

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

⁸ JW Bleakley, [‘The Aboriginals and Half-Castes of Central Australia and North Australia’](#) (1928).

⁹ National Museum Australia, [Aboriginal Land Rights Act \(NT\)](https://www.nma.gov.au/defining-moments/resources/aboriginal-land-rights-act), accessed June 17, 2023, <https://www.nma.gov.au/defining-moments/resources/aboriginal-land-rights-act>.

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 by the Commonwealth 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.¹⁰ 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'.¹¹

In March 2018, the Northern Territory and Land Councils agreed to establish a Treaty Working Group to develop a Memorandum of Understanding. 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.

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 Jupurrurla Kelly, Chair of the Central Land Council, exclaimed:

¹⁰ [Kalkaringi Statement](https://www.artplan.com.au/), accessed June 17, 2023, <https://www.artplan.com.au/>.

¹¹ Helen Davidson, '[Northern Territory Labor Government Announces Majority Female Cabinet](#)', *Guardian Australia*, September 12, 2016, 1.

“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.”¹²

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. Based on consultations with First Nations persons living across the NT, the Final Report recommended establishing First Nation governments through negotiating Territory-wide and nation-based treaties with First Nations groups, extending the commission to a Treaty and Truth Commission, and legislating Voice, Treaty and Truth reforms.¹³

¹² Lorena Allan, [‘Historic Northern Territory treaty agreement means ‘the old way is finished’](#), *The Guardian*, June 9, 2018, 1.

¹³ Jesse Thompson, [‘Landmark treaty report recommends First Nation government system for Indigenous Territorians’](#), *ABC News*, June 29, 2022, 1.

Commissioner McAvoy supervised and submitted the Final Report to the Minister for Treaty and Local Decision Making, Selena Uibo MLA, on 29 June 2022.¹⁴ Minister Uibo tabled the Final Report in Parliament on 26 July 2022 and confirmed the NT government's ongoing support for a pathway to treaty and truth-telling for the Territory. Whilst committing to the pursuit of Territory-based and nation-based treaties with First Nations peoples, Minister Uibo additionally announced a partnership with the four key Land Councils to establish a First Nations Forum on Treaty and promised to submit an in-depth response on the Treaty Report by the end of 2022.

On 29 December 2022, the NT Government responded to the Final Report.¹⁵ Whilst claiming to continue its support for a pathway to treaty, the NT government announced the closure of the independent NT Treaty Commission. Minister Uibo stated the commission's closure was due to the Final Report indicating a lack of complete agreement amongst First Nations persons on treaty processes. Withdrawal of funding for the Commission was justified on the grounds that the Final Report had been released a month after the Commission's budget expired.¹⁶

In the December 2022 response to the Final Report, Minister Uibo announced the establishment of a Treaty Unit within the Office of Aboriginal Affairs, which will oversee a number of First Nations Forums with the Land Councils over two years.¹⁷ The objective of these forums is to 'test' whether First Nations peoples' ambitions for treaty and truth-telling match the 2022 Final Report.

Additionally, the Treaty Unit will concentrate on implementing treaty legislation, supervise First Nations peoples' engagement, establish Territory-wide

¹⁴ 'Northern Territory Treaty Commission', accessed June 17, 2023, <https://treatynt.com.au>.

¹⁵ 'Northern Territory Government', NT Government response to NT Treaty Commission's Final Report, accessed June 17, 2023, <https://aboriginalaffairs.nt.gov.au/>.

¹⁶ Alicia Perera, 'Aboriginal Affairs Minister Selena Uibo defends NT government decision to abolish Independent Treaty Commission', *ABC News*, February 9, 2023, 1.

¹⁷ 'Northern Territory Government', NT Government response to NT Treaty Commission's Final Report, accessed June 17, 2023, <https://aboriginalaffairs.nt.gov.au/>.

truth-telling processes, and implement a regional, local and national First Nations Voice.¹⁸

Independent MP Yingiya Guyula, alongside other First Nations persons, has criticised the NT government for ignoring the Final Reports recommendations and delaying Treaty.¹⁹ The NT government has indicated that it will release additional information on the Treaty Units progress throughout 2023.²⁰

¹⁸ 'Northern Territory Government', Treaty, accessed July 17, 2023, <https://aboriginalaffairs.nt.gov.au/our-priorities/treaty>.

¹⁹ Alicia Perera, 'Aboriginal Affairs Minister Selena Uibo defends NT government decision to abolish Independent Treaty Commission', *ABC News*, February 9, 2023, 1.

²⁰ Northern Territory Government', Treaty, accessed July 17, 2023, <https://aboriginalaffairs.nt.gov.au/our-priorities/treaty>.

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to First Nations Peoples as the traditional owners
of the lands on which we work across the continent.**

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