

Factsheet

Treaty in South Australia 2023

ANTAR



Treaty in 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.”¹

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.”²

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.”³

South Australian Premier, Peter Malinauskas

¹ [Caroline Winter, 'Treaty: South Australian Government Enters Historic Discussions with Aboriginal Nations', ABC News, \(2016\): 1.](#)

² Winter, 'Treaty: South Australia', 1.

³ Sumeyya Ilanbey, ['Labor Secures Stunning Election Win in South Australia, Marshall Concedes'](#), *The Age*, (2022), 1.

What is Treaty?

Australian governments and First Nations communities across the continent have signed many agreements.⁴ 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.

The conditions are important. A treaty is an instrument that is meant to reconcile the past with the present and make for a better future for all. 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.

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.⁵ However, after a change of government in 2018, Treaty negotiations stopped. With a Labor government securing the election in March 2022, Treaty processes have re-commenced and focus on enshrining a First Nations Voice in South Australia's Parliament.⁶

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

⁴George Williams and Harry Hobbs, *Treaty* (Australia: Federation Press, 2nd ed, 2020).

⁵['Government of South Australia', Buthera Agreement, accessed June 20, 2023.](#)

⁶['Government of South Australia', South Australia is Implementing its First Nations Voice to Parliament, accessed June 20, 2023.](#)

natives' in the colony. Arthur recommended a Treaty be signed before a colony was set up in South Australia.⁷

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.⁸ 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.'⁹

Despite the existence of the Letters Patent, the rights of First Nations peoples were ignored. Like the rest of the continent, no Treaties were signed.

Nevertheless, the Letters Patent retained a moral strength. In 1966, the *Aboriginal Lands Trust Act 1966* (SA) 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.¹⁰ Other land rights acts, such as the *Pitjantjatjara Land Rights Act 1981* (SA), have since been passed.¹¹

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

⁷ Lyndall Ryan, [Tasmanian Aborigines: A History since 1803](#) (Australia: Allen & Unwin, 2012), 115.

⁸ 'Museum of Australian Democracy', [Letters Patent establishing the Province of South Australia 19 February 1836](#), accessed July 17, 2023.

⁹ 'Museum of Australian Democracy', Letters Patent.

¹⁰ 'Government of South Australia', [Aboriginal Lands Trust, accessed June 20, 2023](#).

¹¹ 'AIATSIS', [Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981 \(SA\)](#), accessed July 18, 2023.

that the state government would commit \$4.4 million over five years towards the establishment of up to 40 Treaties across South Australia.¹²

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

- Undertake broad consultation on a suitable framework to further Treaty negotiations between the South Australian Government and Aboriginal people of South Australia;
- 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
- 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.¹³

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'.¹⁴ 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.¹⁵

¹² Winter, [Treaty: South Australian](#).

¹³ Material is drawn from Hobbs and Williams, 'Treaty-Making' 178-232.

¹⁴ Rodger Thomas, [Talking Treaty](#): Summary of Engagements and Next Steps, *Government of South Australia*, (July 21, 2017), 5.

¹⁵ South Australian Native Title Services, ['Government Has Treaty Talks with Three SA Aboriginal Nations'](#), (2018) Aboriginal Way 5.

Following this period, a newly established Aboriginal Treaty Advisory Committee recommended three Aboriginal nations take part — the Narungga, Adnyamathanha, and Ngarrindjeri nations.¹⁶

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.¹⁷ That same month, the Ngarrindjeri Regional 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’.¹⁸

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’.¹⁹

Where are we up to?

In March 2022, the Labor party secured government in the South Australian state election. South Australia’s incoming Attorney General, Kyam Maher, has re-confirmed the State government’s commitment to establishing Treaties with First Nations peoples – a process that has begun through institutionalising a First Nations Voice in the State’s parliament.²⁰

¹⁶ Rodger Thomas, [Talking Treaty](#), 1-18.

¹⁷ Lucy Kingston, [‘SA Government Signs Buthera Agreement with Narungga Nation’](#), *South Australian Native Title Services*, February 17, 2018, 1.

¹⁸ Rodger Thomas, [‘Negotiating a Treaty between the Ngarrindjeri People and the State of South Australia’](#), (Government of South Australia, 2018).

¹⁹ Calla Wahlquist, [‘South Australia halts Indigenous treaty talks as premier says he has ‘other priorities’](#), *The Guardian*, April 30, 2018, 1.

²⁰ [Gio yanni Torre, ‘Treaty a key goal for South Australia’s first Aboriginal Attorney General’](#), *National Indigenous Times*, April 8, 2022, 1.

In 2022, Dale Agius, a Kurna, Narungga, Ngadjuri and Ngarrindjeri man, was selected as the inaugural Commissioner for South Australia's First Nations Voice.²¹

Between August 2022 and January 2023, the Commissioner supervised Treaty consultations with First Nations peoples from across the State. Based on the first round of consultations in November 2022, the Commissioner released an Engagement Report to parliament that recommended a First Nations Voice model and a draft First Nations Voice Bill.²² Recommendations included that the Voice be elected by First Nations peoples, include diverse groups of First Nations peoples, and representatives of Voice having direct access to Parliament and Ministers.²³ The SA Government has committed \$2.1 million in the 2022-23 State Budget to commence the Voice to Parliament.²⁴

In February 2023, the Commissioner released a second Engagement Note to the Attorney General and updated consultation feedback and recommendations on the Voice to Parliament Bill.²⁵

On 26 March 2023, the South Australian Parliament passed the First Nations Voice Bill 2023.²⁶ Nominations for the initial First Nations Local Voice election will open between July and August 2023, and enrollment to vote will open in early August 2023.²⁷ The Local Voice is split into six electoral regions across South Australia, and of the members elected in each region, a total of twelve delegates represent their communities voice at the South Australian Parliament.²⁸

Voting for the First Nations Local Voice delegation will take place on 9 September 2023, and Commissioner Agius has committed to participate with

²¹ ['Government of South Australia', South Australia is Implementing its First Nations Voice to Parliament.](#)

²² Ibid.

²³ ['Government of South Australia', Commissioner for First Nations Voice,](#) accessed July 16, 2023.

²⁴ ['yourSAY', First Nations Voice to SA Parliament,](#) accessed July 16, 2023.

²⁵ ['Government of South Australia', Commissioner for First Nations Voice.](#)

²⁶ ['Government of South Australia', South Australia is Implementing its First Nations Voice to Parliament.](#)

²⁷ Ibid.

²⁸ Rebecca Opie & Sarah Garcia, ['South Australia's historic Indigenous Voice to Parliament has passed, but what happens now?'](#), *ABC News*, March 27, 2023, 1.

communities to encourage voting and enrollment.²⁹ The Voice will officially begin speaking to Parliament as of 1 January 2024.³⁰

Currently the Voice Secretariat is being established to support the Local and State First Nations Voice.³¹ As the Voice to Parliament has been legislated in the South Australian Constitution, we now look towards the Federal 2023 Voice referendum.

²⁹ [Government of South Australia', South Australia is Implementing its First Nations Voice to Parliament.](#)

³⁰ Legal Services: Commission South Australia, [Voice to Parliament](#), accessed July 20, 2023, <https://www.lawhandbook.sa.gov.au/>.

³¹ [Government of South Australia', South Australia is Implementing its First Nations Voice to Parliament.](#)

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**ANTAR is proud to acknowledge and pay our respects
to First Nations Peoples as the traditional owners
of the lands on which we work across the continent.**

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