



THE BARUNGA AGREEMENT

8 JUNE 2018

A Memorandum of Understanding to provide for the development of a framework for negotiating a Treaty with the First Nations of the Northern Territory of Australia



Anindilyakwa
Land
Council



THE BARUNGA AGREEMENT

A MEMORANDUM OF UNDERSTANDING TO PROVIDE FOR THE DEVELOPMENT OF A FRAMEWORK FOR NEGOTIATING A TREATY WITH THE FIRST NATIONS OF THE NORTHERN TERRITORY OF AUSTRALIA

BETWEEN

THE NORTHERN LAND COUNCIL (NLC), THE CENTRAL LAND COUNCIL (CLC),
THE ANINDILYAKWA LAND COUNCIL (ALC) AND THE TIWI LAND COUNCIL (TLC)

(THE ABORIGINAL LAND COUNCILS)

and

THE NORTHERN TERRITORY GOVERNMENT

(THE NTG)

The Aboriginal Land Councils are independent statutory authorities established under the *Aboriginal Land Rights (Northern Territory) Act 1976* to express the wishes and protect the interests of traditional owners throughout the Northern Territory. The members of the Land Councils are elected by Aboriginal people living in their areas. The NLC and CLC are also Native Title Representative Bodies recognised under the *Native Title Act 1993* to promote the interests of native title holders across the Territory ('Traditional owners' include native title holders).

The NTG is the democratic, representative and executive arm of the Northern Territory. Its functions and powers derive from the *Northern Territory Self Government Act 1978*, which established the Northern Territory of Australia as a body politic under the Crown.





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Aboriginal people, the First Nations, were the prior owners and occupiers of the land, seas and waters that are now called the Northern Territory of Australia.

The First Nations of the Northern Territory were self-governing in accordance with their traditional laws and customs.

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

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Background to the Memorandum of Understanding:

This Memorandum of Understanding (MOU) represents the first significant step in advancing a Treaty in the Northern Territory since the call for a national Treaty in the historic Barunga Statement by the Northern and Central Land Councils.

The Barunga Statement was presented to former Prime Minister, RJ Hawke AC, by Mr Galarrwuy Yunupingu AM and Mr Wenten Rubuntja at the annual Barunga Cultural and Sporting Festival on 12 June 1988.

The text of the Barunga Statement is as follows:

We, the Indigenous owners and occupiers of Australia, call on the Australian Government and people to recognise our rights:

- *to self-determination and self-management, including the freedom to pursue our own economic, social, religious and cultural development;*
- *to permanent control and enjoyment of our ancestral lands;*
- *to compensation for the loss of use of our lands, there having been no extinction of original title;*
- *to protection of and control of access to our sacred sites, sacred objects, artefacts, designs, knowledge and works of art;*
- *to the return of the remains of our ancestors for burial in accordance with our traditions;*
- *to respect for and promotion of our Aboriginal identity, including the cultural, linguistic, religious and historical aspects, and including the right to be educated in our own languages and in our own culture and history;*
- *in accordance with the universal declaration of human rights, the international covenant on economic, social and cultural rights, the international covenant on civil and political rights, and the international convention on the elimination of all forms of racial discrimination, rights to life, liberty, security of person, food, clothing, housing, medical care, education and employment opportunities, necessary social services and other basic rights.*
- *We call on the Commonwealth to pass laws providing:*
- *A national elected Aboriginal and Islander organisation to oversee Aboriginal and Islander affairs;*
- *A national system of land rights;*
- *A police and justice system which recognises our customary laws and frees us from discrimination and any activity which may threaten our identity or security, interfere with our freedom of expression or association, or otherwise prevent our full enjoyment and exercise of universally recognised human rights and fundamental freedoms.*

We call on the Australian Government to support Aborigines in the development of an international declaration of principles for indigenous rights, leading to an international covenant.

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.

The call for the Commonwealth Parliament to negotiate a national Treaty has yet to be realised. However, thirty years later, the Aboriginal Land Councils remain fully committed to the goals and aspirations articulated in the Barunga Statement.

The NTG, for the first time in its history, is also committed to commencing discussions on developing a Treaty (or Treaties) in the Northern Territory with Aboriginal Territorians. It has established an Aboriginal Affairs Sub-Committee of the Northern Territory Cabinet to advance a number of Aboriginal Affairs priorities including a Treaty.

The Aboriginal Land Councils wrote to the Chief Minister of the Northern Territory on 2 March 2018 proposing to reach an MOU with the NTG outlining a consultation process for a Treaty with Aboriginal people that is led by Aboriginal people.

At an historic meeting between the Aboriginal Land Councils and the NTG on 23 March 2018 in Alice Springs it was agreed to establish a Treaty Working Group to develop the MOU.

It is intended that this MOU provides the opportunity, building on the significance of the 30th anniversary of the Barunga Statement, to facilitate consultation with all Aboriginal people in the Northern Territory to allow for a framework to be agreed for negotiating a Treaty.

Subject to the *Northern Territory (Self-Government) Act 1978*, the Legislative Assembly has power, with the assent of the Administrator or the Governor General to make laws for the peace, order and good government of the Territory.

It is acknowledged that there is a range of Aboriginal interests in the Northern Territory and that all Aboriginal people and their representative bodies must have the opportunity to engage fully in the process agreed to in this MOU.

It is further acknowledged that non-Aboriginal Territorians need to be brought along with this process.

It is understood that the use of the word Treaty in this MOU also includes the plural “Treaties” should the proposed framework include provision for negotiating multiple treaties.

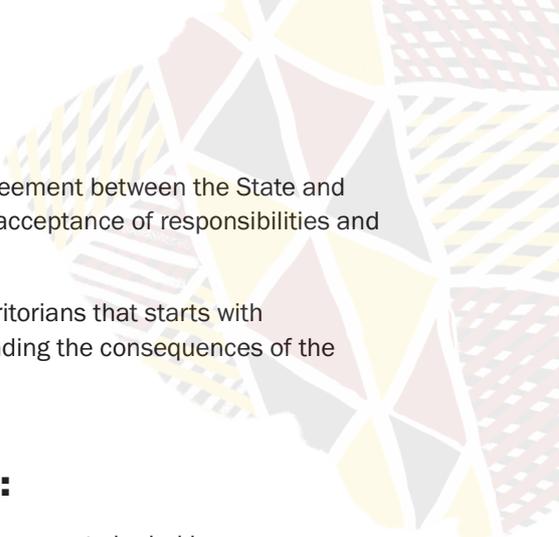
IT IS AGREED BY THE NORTHERN LAND COUNCIL, THE CENTRAL LAND COUNCIL, THE ANINDILYAKWA LAND COUNCIL AND THE TIWI LAND COUNCIL and THE NORTHERN TERRITORY GOVERNMENT as follows:

Principles Guiding the Treaty Consultation Process

1. It is envisaged that should a Treaty ultimately be negotiated, it will be the foundation of lasting reconciliation between the First Nations of the Territory and other citizens with the object of achieving a united Northern Territory.
2. All Aboriginal people of the Northern Territory need to be heard and the consultation process agreed to in this MOU needs to be inclusive, accessible and transparent to all.
3. Traditional owners, as the original owners and occupiers of the Northern Territory, and represented by the Aboriginal Land Councils, are integral to consultation concerning a Treaty.
4. All Territorians should ultimately benefit from any Treaty that is agreed in the Northern Territory.
5. The NTG must not exclude from discussions any legitimate issue raised by the Parties or other Aboriginal people for inclusion in a Treaty while the consultation process agreed to in this MOU is underway.
6. It is agreed that:
 - a) Aboriginal people, the First Nations, were the prior owners and occupiers of the land, seas and waters that are now called the Northern Territory of Australia.
 - b) The First Nations of the Northern Territory were self-governing in accordance with their traditional laws and customs; and that
 - c) First Nations peoples of the Northern Territory never ceded sovereignty of their lands, seas and waters.
7. It is also agreed there has been deep injustice done to the Aboriginal people of the Northern Territory, including violent dispossession, the repression of their languages and cultures, and the forcible removal of children from their families, which have left a legacy of trauma, and loss that needs to be addressed and healed.
8. The Treaty must provide for substantive outcomes and honour the Articles of the United Nations Declaration on the Rights of Indigenous Peoples.





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9. Recognising that a Treaty is of much wider significance than a normal agreement between the State and Indigenous peoples, it is also recognised that Treaty making involves the acceptance of responsibilities and obligations by all parties;
 10. The Treaty should aim to achieve successful co-existence between all Territorians that starts with 'truth telling' which involves hearing about, acknowledging and understanding the consequences of the Northern Territory's history.

Objectives of the Memorandum of Understanding:

The objective of this MOU is to agree about and to implement a consultation process to be led by an independent Treaty Commissioner, which will inform the development of an agreed framework to negotiate a Northern Territory Treaty.

This framework may focus on, but not be limited to, the following areas:

- Agreement as to what a Treaty is and its potential contents;
- What a Northern Territory Treaty will seek to achieve;
- Whether there should be one or multiple treaties;
- What outcomes are possible under a Treaty for Aboriginal people that encompass recognition as First Nations, rights, obligations and opportunities; and
- What the best process is for negotiating a Treaty.

The key objective of any Treaty in the Northern Territory must be to achieve real change and substantive, long term, benefits for Aboriginal people. A Treaty needs to address structural barriers to the wellbeing of Aboriginal people in the Northern Territory and provide for economic, social and cultural benefits.

Appointment of an Independent Treaty Commissioner

The NTG will appoint an independent Aboriginal person as Treaty Commissioner. The appointment, role and functions of the Treaty Commissioner will be enacted in legislation, the contents of which shall be agreed by the parties.

In the interim the Chief Minister shall appoint the Treaty Commissioner to consult, inquire, report and make recommendations in accordance with Terms of Reference agreed by the parties. The Terms of Reference shall outline, in accordance with this MOU, the role, responsibilities, outputs, reporting requirements, term of appointment and qualifications of the Treaty Commissioner.

The role and functions are to include:

1. Consultation with all Aboriginal people and their representative bodies in the Northern Territory about their support for a Treaty and on a suitable framework to further Treaty negotiations with the NTG;
2. Providing a public report to the Chief Minister on the outcomes of the consultation process and a proposed framework for Treaty negotiations; and
3. Facilitating conversations for a possible Treaty framework process between the NTG, Aboriginal Land Councils and other Aboriginal representative bodies, and community groups.

The Treaty Commissioner will be independent of the NTG and Aboriginal Land Councils. The reasonable costs of a Treaty Commissioner to perform the roles and functions and achieve the objectives listed in this agreement, will be paid for by the NTG.

Consultation Process

The Treaty Commissioner will devise and implement an Aboriginal-led consultation program after discussions with the Treaty Working Group. That program will have two stages and include:

- In the first stage (to take no more than 12 months), advising and sharing information and ideas about different experiences nationally and internationally and models of what a Treaty could be with Aboriginal Territorians;
- Explanations of the legal context of a Northern Territory Treaty;
- Initial consultations to determine the level of interest in a Treaty amongst Aboriginal Territorians and the provision of an interim report by the Treaty Commissioner to the Chief Minister to be tabled in the Legislative Assembly;
- At the start of the second stage, release of a public Discussion Paper to help facilitate informed discussions among Aboriginal people that are focussed on reaching a consensus on particular positions with respect to a Treaty;
- Translating the Discussion Paper into the major Aboriginal languages in the Northern Territory (including audio translations) by the Northern Territory Aboriginal Interpreter Service;
- Multiple methods for Aboriginal Territorians to give feedback;
- Consultations will follow a structured and principled process utilising an identical agenda for consistency across locations;
- Land councils will provide advice to the Treaty Commissioner on locations for regional and remote consultations taking into account small, medium and large communities and homelands; and
- A final report on outcomes of consultations about a possible Treaty and proposing a framework for a Treaty to proceed. The report is to be provided to the Chief Minister within 18 months of the conclusion of the first stage, tabled in the Northern Territory Legislative Assembly and shall be publicly released by the Chief Minister within 21 days of its receipt.

Coordination and Support

The NTG and the Land Councils will cooperate to support the consultation process to be undertaken by the Treaty Commissioner in regional and remote locations.

The Parties will work together with the Treaty Commissioner to establish consultation protocols for Treaty matters. This will include ensuring the ongoing cooperation of all Parties in consultations across the Northern Territory and the provision of consistent information. Respective parties will also keep the Treaty Commissioner informed of any discussions concerning a Treaty to enable all Aboriginal voices to be heard by the Commissioner.

Treaty Working Group

The Northern Territory Treaty Working Group membership will continue to comprise senior representatives of the NTG and Aboriginal Land Councils. However, by agreement, after the signing of the MOU, its membership will be reviewed and opened up to other Aboriginal representative bodies and community groups in the Northern Territory to also participate.

After the appointment of the Treaty Commissioner the continuation and terms of reference for the Treaty Working Group will be further reviewed.





Related Matters

Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples

At the time this MOU is being signed, the Commonwealth Parliament has established a Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples 2018.

This follows a constitutional convention on 23-26 May 2017 that brought together over 250 Aboriginal and Torres Strait Islander leaders at the foot of Uluru in the Northern Territory on the lands of the Anangu people. The majority resolved, in the 'Uluru Statement from the Heart', to call for the establishment of a 'First Nations Voice' in the Australian Constitution and a 'Makarrata Commission' to supervise a process of 'agreement-making' and 'truth-telling' between governments and Aboriginal and Torres Strait Islander peoples.

The NTG and Aboriginal Land Councils agree to contribute to the deliberations of the Joint Select Committee and hope that it will be possible to achieve constitutional recognition that also includes a Commonwealth Treaty making process.

Negotiating a Northern Territory Treaty does not remove the need for a Treaty at a national level, accompanied by 'truth telling' or a voice to the Parliament.

A Northern Territory Treaty cannot address all the consequences of the British taking control of the land, seas and waters of the Northern Territory and its legacy of injustice. A Federal Treaty process is a crucial next step in our journey as a nation.

Status of the Memorandum of Understanding

The Parties do not intend any of the provisions of this Agreement to be legally enforceable. However, that does not lessen the commitment of the Parties to fully implementing the Agreement in a transparent, consultative and accountable manner.

To facilitate this, it is agreed by the Parties that the Agreement will be published immediately on the websites of the Parties once it is signed and tabled in the Legislative Assembly as soon as possible and that quarterly updates will be made publicly available by the Treaty Commissioner.

Timeframe, Modification and Termination

The term of this MOU is for a period of three years, starting on 8 June 2018, unless otherwise extended or terminated.

Any modification or extension of this Memorandum must be in writing and signed by all parties.

It is not intended that any party will seek to withdraw from this Memorandum. However, should they contemplate doing so, it is agreed that this should be a last resort because one or more parties are unable to resolve their concerns and only after consulting with all other parties and doing their utmost to settle differences in the interests of all Territorians.

EXECUTED AS A MEMORANDUM on this eighth (8th) day of June 2018 at Barunga, Northern Territory.

The Honourable Michael Gunner MLA Chief Minister of the Northern Territory
for and on behalf of the Northern Territory of Australia

Chair of Northern Land Council

Chair of Anindilyakwa Land Council

Chair of Central Land Council

Chair of Tiwi Land Council





**NORTHERN
LAND COUNCIL**

Our Land, Our Sea, Our Life



**CENTRAL
LAND
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**NORTHERN
TERRITORY
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