

Northern Territory Treaty Commissioner

Terms of Reference

7 March 2019
Version 4 - FINAL

Foreword

The First Nations peoples of the Northern Territory never ceded sovereignty of their lands, seas and waters and were self-governing in accordance with their traditional laws and customs.

In recognition of this, the Northern Territory Government is committed to commencing discussion on developing a Treaty (or Treaties) with First Nations peoples in the Northern Territory.

The First Nations of the Northern Territory will be one party to a Treaty. The Northern Territory Government would be the other party. There may be more than one Treaty and more than one First Nation group that is a party to a Treaty. A Treaty will allow both parties to negotiate and agree on rights and responsibilities and establish a long lasting relationship.

The use of the word Treaty in this Terms of Reference also includes the plural "Treaties".

Purpose

This is the Terms of Reference for the independent Northern Territory Treaty Commissioner and is intended to set out the role, responsibilities and outputs for this position.

The Northern Territory Treaty Commissioner will:

- a) Facilitate consultation with Aboriginal people in the Northern Territory regarding a Treaty; and
- b) Develop a framework for Treaty negotiations.

The Treaty Commissioner is independent of the Northern Territory Government and will conduct themselves in an open, transparent manner. The Commissioner has a responsibility to inquire into and report upon the views of all Aboriginal Territorians on this important matter and inform non-Aboriginal Territorians about this process.

The Commissioner will inquire, report, investigate and make recommendations to the Chief Minister of the Northern Territory.

The key objective of any Treaty in the Northern Territory must be to achieve real change and substantive, long term, benefits for Aboriginal people. The Treaty Commissioner will advise the Northern Territory Government about how they can best achieve this.

Role

In order not to delay work on this historic initiative the Treaty Commissioner will initially be a non-statutory appointment. The Northern Territory Government will start the process of drafting legislation for this position to be appointed as a statutory body established under an Act of Parliament in consultation with the Commissioner

The Treaty Commissioner will consider and report on:

- a) Interest in a Treaty in the Northern Territory;
- b) What a Northern Territory Treaty will seek to achieve;
- c) Whether there should be one or multiple treaties;
- d) The best model for a Treaty in the Northern Territory;
- e) What outcomes are possible under a Treaty for Aboriginal people;
- f) What the best process is for negotiating a Treaty; and
- g) The potential contents of any Treaty in the Northern Territory.

Responsibilities

The Treaty Commissioner is responsible for:

- a) Undertaking consultation with First Nations and Aboriginal people to ascertain their support for a Treaty;
- b) Undertaking consultation with Aboriginal representative bodies and organisations on a future treaty process;
- c) Undertaking research in relation to a Treaty and providing advice to government, First Nations, Aboriginal communities and Land Councils on best practice, to support future Treaty negotiations in the Northern Territory;
- d) Developing a suitable framework to further Treaty negotiations with the Northern Territory Government;
- e) Providing advice to government in relation to the most appropriate and effective form of Aboriginal representation for any future Treaty negotiations;
- f) Ensuring that the broader public, including non-Aboriginal Territorians, are engaged;
- g) Managing the operations of the Treaty Commissioner's Office, including staff and budget allocations; and
- h) Establishing internal protocols and procedures, including reporting systems, to ensure information is communicated to government, the Land Councils, and the Treaty Working Group.

The Northern Territory Government is responsible for:

- a) Establishing and resourcing a Treaty Office to support the Treaty Commissioner to undertake this role; and
- b) Providing assistance, at the direction of the Treaty Commissioner.

The Northern Territory Land Councils (Anindilyakwa Land Council, Central Land Council, Northern Land Council, and Tiwi Land Council) will be responsible for:

- a) Supporting the consultation process to be undertaken by the Treaty Commissioner in regional and remote locations; and
- b) Providing the Treaty Commissioner with feedback from any discussions the Land Councils may have concerning a Treaty.

Outputs

The Treaty Commissioner will devise and implement a consultation program with two stages.

Stage one

- Advise and share information and ideas about different best practice approaches to negotiating and settling a Treaty nationally and internationally.
- Explore possible models for a Treaty in the Northern Territory.

- Provide explanations of the legal context of a Northern Territory Treaty.
- Determine the level of interest in a Treaty amongst First Nations and Aboriginal Territorians.

Stage two

- Release of a public discussion paper to facilitate informed discussions about the matters outlined under 'role'.
- This stage of consultations will revolve around the content of the discussion paper and an assessment of whether a consensus or majority view exists on all or any of the substantive items included in the Discussion Paper.
- Make recommendations to the Northern Territory Government on next steps and the appropriate framework to be put in place to undertake Treaty negotiations.

Scope

All legitimate issues raised by Aboriginal people for inclusion in a Treaty should be considered by the Treaty Commissioner. Legal matters that arise during consultations, particularly interactions with existing Commonwealth legislation and the Commonwealth's legislative power, should be explored and external expertise and advice sought where appropriate.

Reporting requirements

Stage one

- Interim report to be provided to the Chief Minister.
- Discussion paper for public release (based on the matters outlined under 'Role')

To take no more than 12 months from the time a Treaty Commissioner is appointed.

Stage two

- Final report on the outcomes of consultations; recommendations on next steps; and a proposed negotiation framework for Treaty to proceed in the Northern Territory.

To take no more than 18 months from the provision of the interim report to the Chief Minister. Given the nature of the consultative process and its subject matter, favourable consideration will be given to reasonably necessary extensions of these time frames as circumstances require.

Release of reports

All reports will be provided by the Treaty Commissioner to the Chief Minister who will table the interim and final report in the Legislative Assembly within 21 days of the report being received. If the report cannot be tabled in that time, the Chief Minister will publicly release the report before those 21 days expire and then table the report at the next meeting of the Legislative Assembly.

Attributes, qualifications and location

Attributes

The Treaty Commissioner must be an Aboriginal person who has strong connections to the Northern Territory.

Qualifications

Any potential appointee must have:

- demonstrated experience and expertise in Aboriginal affairs;
- strong, demonstrated research and analytical skills;
- Strong, demonstrated comprehensive stakeholder engagement skills.

Location

The Commissioner must be located in the Northern Territory for the term of their appointment.

Consultation arrangements

The Treaty consultation process needs to be inclusive, accessible and transparent to all. To allow informed discussions materials will be translated, including audio translations, into major Aboriginal languages in the Northern Territory. This includes the public discussion paper to be released at the end of stage one of consultations.

The Aboriginal Interpreter Service will be utilised whenever appropriate.

The Treaty Commissioner will arrange multiple methods for Aboriginal and non-Aboriginal Territorians to give feedback throughout this process. This includes face to face consultations in remote, regional, and urban locations. Consultations across the Territory will follow a structured, consistent and principled process.

The Treaty Commissioner will seek advice from the four Northern Territory Land Councils and the Northern Territory Government on locations for regional and remote consultations taking into account small, medium and large communities and homelands.

Key stakeholders

All Aboriginal people need to be heard through the consultation process to be led by the Treaty Commissioner.

Traditional Owners, as the original owners and occupiers of the Northern Territory, are integral to consultation concerning a Treaty.

The Northern Territory Government has established an Aboriginal Affairs Sub-Committee of Cabinet (Sub-Committee) to advance a number of Aboriginal Affairs priorities including a Treaty. The Treaty Commissioner will work with the Sub-Committee throughout their term.

The four Land Councils and the Northern Territory Government have entered a Memorandum of Understanding (MoU) regarding the engagement process for a Treaty and established a Treaty Working Group. The Treaty Commissioner will work with all parties to this MoU, and the Treaty Working Group, in keeping with the spirit of this agreement. This includes establishing consultation protocols to ensure the ongoing cooperation and the provision of consistent information. In addition, parties to the MoU will keep the Treaty Commissioner informed of any discussions concerning a Treaty to ensure all Aboriginal voices are heard by the Commissioner.

Treaty Office

The Treaty Commissioner will have the support of an independent Treaty Office in undertaking this role.

The Commissioner and their staff must act independently and impartially. The Commissioner will not be subject to direction from the Northern Territory Government. Similarly, the Commissioner's

staff will only be subject to the direction of the Commissioner or another member of the Commissioner's staff.

The Treaty Office will have a set reasonable annual budget. This will provide for the engagement of staff and consultants with the necessary expertise to allow the Treaty Commissioner to fulfil their responsibilities and reporting requirements as they determine. This includes completing Territory-wide consultations.

The Northern Territory Government will resource and set up the Treaty Office. Staffing and budget will be finalised between the Northern Territory Government and the Treaty Commissioner upon their appointment.

Management

Upon the appointment of the Commissioner, the Commissioner and Department of Chief Minister will agree to a memorandum of understanding setting out responsibilities for management of Treaty Office staff and budget allocations.

The Commissioner will be responsible for the overseeing the day-to-day operations of the Office in accordance with this memorandum of understanding.

Term of appointment

The Treaty Commissioner will be appointed for a three-year term. The length of term under legislation will be considered during drafting and based on the advice of the Treaty Commissioner.

Remuneration

To be determined based on the successful appointee.