

Office of the Treaty Commissioner

Talking Treaty

Summary of Engagements and Next Steps

Dr Roger Thomas, Treaty Commissioner
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Acknowledgement of Country

The Government of South Australia acknowledges Aboriginal people as the first peoples and nations of South Australia. We recognise and respect their cultural connections as the traditional owners and occupants of the land and waters of South Australia and that they have and continue to maintain a unique and irreplaceable contribution to the state.

Executive Summary

This is the report of the South Australian Treaty Commissioner Dr Roger Thomas to the Minister for Aboriginal Affairs and Reconciliation, the Hon Kyam Maher MLC, summarising the views of Aboriginal people of the State on treaty and recommending a suitable framework to enable treaty negotiations to begin.

The Treaty Commissioner and staff have been travelling around South Australia talking to as many Aboriginal people as possible about their views on treaty. It met face-to-face with over 600 people and collected more than 280 written submissions and responses to surveys from individuals and groups.

The engagement program aimed to be respectful, unbiased and accessible to as many Aboriginal people of South Australia as possible. As an Aboriginal-led and independent engagement program, activities were sensitive to community protocols and well received by the community at large.

Throughout its travels the Treaty team observed a strong appetite amongst the broader Aboriginal community to discuss what a treaty could mean to them. The high rates of participation and quality of feedback received underlined the passion of Aboriginal people to discuss treaty and be deeply involved from the earliest stages.

Engagements attracted a very wide range of opinions and perspectives. The Treaty team observed a number of common themes raised including: treaty process; historical and existing agreements and policies; truth and redress; social issues; economic empowerment; autonomy and decision making; and representation. The conversation surrounding these common themes, and many more observed, is by no means completed.

Engagements held were well-received and provided a significant input to this report, it is important to note that there remains a section of the South Australian Aboriginal community that need to be consulted. In addition, some groups formed their own internal Treaty working groups whilst others expressed a desire for the Treaty team to hold ongoing engagements to assist with further education and ideas about next steps.

This report recommends that the Treaty team continue consultations throughout the State; the key elements of a framework contained within this report enabling first steps to treaty negotiations to be taken; a set of principles to inform the approach to treaty negotiations; and that this report be made public.

Treaty Commissioner and staff would like to thank the many people who have contributed to the consultations through meeting with us, talking to us on the telephone or completing the on-line survey.

1. Introduction

In December 2016, Minister for Aboriginal Affairs the Hon Kyam Maher MLC announced the South Australian Government will commence treaty discussions with its Aboriginal people as a significant step to strengthening the relationship between the government and Aboriginal people.

In February 2017, Dr Roger Thomas was appointed independent Treaty Commissioner for a term of three years. Government set aside \$4.4 million over five years to support the process including the establishment of the Treaty Commissioner's Office within the Department of State Development. The Treaty Commissioner was assisted by three staff, referred to henceforth as the 'Treaty team'.

The Treaty Commissioner's role and function is to:

1. Undertake broad consultation on a suitable framework to further Treaty negotiations between the South Australian Government and Aboriginal people of South Australia;
2. 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
3. Facilitate conversations for a possible Treaty framework process between the Government and Aboriginal people of South Australia.

Since his appointment, the Treaty Commissioner has been travelling around South Australia talking to as many Aboriginal people as possible about their views on treaty. This conversation is by no means completed.

The purpose of this report is to summarise engagements and collate the common themes about what a treaty might be, and to recommend the first steps to allow further treaty negotiations to begin. This pathway will form the basis of a framework.

1.1. Treaty and other agreements, policies

In travelling throughout the State talking treaty, considering submissions and conducting research, it was evident that a treaty's relationship to past and present agreements, policies and models for treaty elsewhere was a frequent topic. Examples include:

Australian agreements and policies	Interstate and overseas treaty models
<ul style="list-style-type: none">• Uluru Statement and Referendum Council Report	<ul style="list-style-type: none">• Victoria
<ul style="list-style-type: none">• Native Title	<ul style="list-style-type: none">• New Zealand (Treaty of Waitangi)
<ul style="list-style-type: none">• South Australian Letters Patent	<ul style="list-style-type: none">• Canada and British Columbia
<ul style="list-style-type: none">• Aboriginal Regional Authority Policy	

Any reference to legal issues is not legal advice, but merely a commentary on the current legal framework operating with respect to treaty overseas and in Australia for the purposes of discussion. Independent legal advice should be sought on any of these matters.

2. Engagements

This section is a composite of the views put forward by many Aboriginal people of South Australia about a treaty and what it could mean to them.

These engagements attracted a wide range of opinions and perspectives. The Treaty Commissioner and staff believe the strong levels of participation and high quality of feedback received underlined the passion of Aboriginal people to discuss treaty and be deeply involved from the earliest stages.

2.1. Engagement approach

The engagement program aimed to be respectful, unbiased and accessible to as many Aboriginal people of South Australia as possible. As an Aboriginal-led and independent engagement program, activities were sensitive to community protocols and well received by the community at large.

The Treaty Commissioner facilitated engagements with assistance from the Treaty team. At the start of engagements, the Treaty Commissioner explained his role of independence and that he was *'starting with a blank piece of paper and collecting the views and aspirations of as many Aboriginal people of the State as possible'*.

To help frame discussions, engagements also opened with an explanation of the legal context surrounding a potential treaty involving the Government of South Australia. Whilst the Treaty team could not provide legal advice to participants in the consultation process, it was considered important to manage expectations noting the State's limited constitutional powers.

Engagements typically involved a presentation, open discussions including Q&A, and a workshop guided by high-level themes about treaty. Respectful meeting protocols were observed and participants were encouraged to freely express their views.

A summary of workshop themes and ideas was generally provided in writing at the end of each session. Where appropriate, information materials were translated and community views were obtained with assistance from an interpreter.

The Treaty team met twice weekly and collated common themes raised by the community to inform the format of future engagements. Themes were further refined following a workshop with the South Australian Aboriginal Advisory Council (SAAAC), the body responsible for advising Government in matters of Aboriginal affairs' policy.

Engagement focussed on sharing information and ideas about different experiences and models of what a treaty could be, through which the community was inspired to learn more about treaty. Opportunities for Aboriginal people to learn about treaty engagements included:

- A website, www.statedevelopment.sa.gov.au/treaty, which included a Consultation Paper, Fact Sheet and other important information
- A free-call community hotline
- A Facebook page @Treaty Commissioner;

- E-mail to Department of State Development Aboriginal Affairs and Reconciliation database and all South Australian Government employees (SAGEMS)
- A mail-out to targeted Aboriginal stakeholders
- Media Interviews including: SBS National Indigenous Television; ABC Local Radio South Australia; Central Australian Aboriginal Media Association; Anangu Lands Paper Tracker Radio; Riverland Radio and Aboriginal Way Magazine.
- Public appearances at events including: University of Adelaide Wirritu Yarluy Aboriginal Education; Flinders University Yunggoorendi First Nations Centre; 1967 Referendum 50th Anniversary Dinner, Referendum Council First Nations Regional Dialogue (Adelaide); NAIDOC Week Annual Ball; and 2017 National Reconciliation Week Breakfast.

The methods through which Aboriginal people could provide feedback included:

- Face-to-face engagements
- Written submissions
- Hard-copy feedback form
- Online survey which provided opportunities for qualitative and quantitative viewpoints
- Telephone calls
- Letters
- Emails to dedicated address: treaty@sa.gov.au
- Social media

Engagements have comprised two key stages to date:

1. Stage One: Initial Engagements (April 2017)

Initial consultations were designed to introduce the Treaty Commissioner's role and ask three basic questions to help shape future stages of the treaty engagement process.

- i. Do you want a treaty?*
- ii. Should there be a single treaty for all Aboriginal people of South Australia, or multiple treaties with different groups?*
- iii. What are your ideas about what should happen next?*

Responses to these questions were welcomed at face-to-face engagements, and via an online and hard-copy feedback form. A Consultation Paper and accompanying information was developed to assist consultations and guide answers, with over 700 copies distributed.

Following engagements with over 280 Aboriginal people and receipt of many written responses, an interim report was provided to the Minister for Aboriginal Affairs and Reconciliation affirming that the Treaty Commissioner had found a strong appetite from Aboriginal people to discuss treaty.

Anecdotal evidence and responses to survey questions further indicated an overwhelming preference for treaty discussions and negotiations at local group or nation level in the early stages. The interim report also observed that understanding of treaty and what it might achieve varied significantly across the State, and key feedback received included more information is required and the process should not be rushed.

2. Stage Two: Further Engagements (May – July 2017)

Following the interim report, a phase of further engagements commenced with larger groups to gather views in more detail. Treaty team worked with Aboriginal groups to deliver information sessions and workshops that were tailored to their specific needs.

Examples of typical questions include:

- i. Aspirations: What could be in a Treaty for you?*
- ii. Implementation: How could it be achieved, and benefit future generations?*
- iii. Principles: What ‘rules of the game’ should Aboriginal groups and State Government act by in talking Treaty?*
- iv. Representation: How do you see yourself being represented in Treaty talks?*
- v. Eligibility: What should be needed to represent you in a Treaty?*

Questions were tailored to the level of understanding and interests of each group. In addition, feedback via detailed written feedback, online surveys and hard-copy feedback forms was continued to be welcomed. The following section provides a summary of engagement participation to date.

2.2. Summary of Participation

Over a period of 125 days, face-to-face engagements were held with over 600 Aboriginal people and more than 280 written submissions were received.

The Treaty team travelled more than 11,000 kilometres across the State to several regions including metropolitan Adelaide, the South-East, Mid North, Far North, Far West Coast including Yalata and Anangu Pitjantjatjara Yankunytjatjara lands.

Overall reach

- 600+ attendances at meetings and engagements;
- 280+ detailed written submissions, and hardcopy and online survey responses;
- 2000+ visits to website, average time spent 4 minutes (above industry standards);
- 1500+ consultation papers and flyers circulated;
- 160+ followers on Facebook @Treaty Commissioner.
- 100+ mail-outs to targeted stakeholders
- 700+ electronic direct e-mails to DSD-AAR database
- 100,000+ recipients of South Australian Government Electronic Messaging Service (SAGEMS)

Engagement demographics

- 600+ attendees across 50 meetings and engagements, including:
 - 27 in metropolitan Adelaide (54%)
 - 15 in regional areas (30%)
 - 8 in remote communities (16%)
- Peak Aboriginal bodies engaged:
 - SA Native Title Services State-wide forum; SA Aboriginal Advisory Council; SA Aboriginal Lands Trust; SA Aboriginal Heritage Committee; SA Commissioners for Aboriginal Engagement; Referendum Council (Adelaide); Reconciliation South Australia.
- Senior Officers Group Aboriginal Affairs.
- Key interstate and overseas stakeholders engaged:
 - New Zealand Attorney-General and Minister for Treaty of Waitangi Negotiations; Ernst & Young Indigenous Sector Practice, independent consultants appointed by Victorian Government for their treaty process.

Written feedback demographics

- 280+ written submissions comprising:
 - 13 detailed written submissions from individuals and groups including from South Australian Aboriginal Advisory Council and the South Australian Heritage Committee.
 - 196 online survey responses (136 ATSI)
 - 72 hard copy survey responses (65 ATSI)
- Demographics of the 201 ATSI respondents include:
 - 44% are male and 55% female (1% no answer)
 - 57% are aged 40 years or older, 42% are under 40 (1% no answer)
 - 35% are Native Title Holders or Claimants, 47% are not (18% no answer)
 - 54% live metropolitan, 23% regional, 13% are remote (10% no answer).

The following section provides a summary of engagement themes to date.

2.3. Engagement Themes

Outlined below is a summary of common themes raised by people at face-to-face meetings, telephone discussions, and in surveys and detailed written submissions. This is followed with direct written quotes of participants.

2.3.1. Treaty process

Common themes:

- **This is a welcome and meaningful process; it should not be rushed.**
- **Treaty should be lasting and placed in legislation and/or the constitution.**
- **An inclusive process with access to information to all members of the Aboriginal community.**
- **Uncertainty about whether Government is genuine and lack of trust about its process.**

Comments from Written Responses:

- *“Treaty is a highly significant and emotive issue in the Aboriginal community. The use of the word ‘Treaty’ rather than ‘agreement’ is very important to Aboriginal South Australians and brings with it increased expectations about what will be delivered by the government”*
- *“This is not a one-sided thing, as an Aboriginal Community we might want this but we want to know why you as a government want this. We want you to be doing this more than just because we want this.”*
- *“The process is moving too fast and should be slowed down so that Aboriginal people can properly digest what is being proposed and the principles behind the proposition.”*
- *“Treaty needs to be both symbolic and practical so that it delivers real benefits for Aboriginal South Australians.”*
- *“The consultation process needs to ensure that the voices of the more vulnerable and disengaged members of the Aboriginal community are heard.”*
- *“Treaty needs to be a living document that should include a process whereby it can be regularly reviewed and amended so that it remains contemporary and representative of the wishes of the Aboriginal community.”*
- *“Legislative reform to ensure authentic and rigorous consultation with Community over a variety of matters. Water, land, education, health, etc.”*
- *“Set up an office where community can come in to discuss issues relating to the treaty.”*

2.3.2. Historical and Existing Agreements and Policies

Common themes:

- **Unfinished business of Letters Patent as the starting point for treaty.**
- **Important to understand strengths and weaknesses of overseas treaty models.**
- **Work with past and present Australian laws and policies including Native Title, Aboriginal Regional Authorities, and recognition of Aboriginal people in the Australian Constitution.**

Comments from Written Responses:

- *“As the directions of the Letters Patent (1836) were ignored by our founding fathers, treaty is one step towards making amends.”*
- *“Because it’s is the right thing to do and the King’s Letters Patent should be the driving force and respected.”*
- *“Must be a treaty that includes Stolen Generation survivors and their families.”*
- *“A treaty would correct the oversights of not meeting the obligation of the Crown as described in the proclamation of the colony of South Australia.”*
- *“A treaty should recognise and act upon the intentions of the Letters Patent establishing South Australia, and builds on the United Nations Declaration on the Rights of Indigenous Peoples.”*
- *“The treaty should be inclusive of Native Title legislation.”*
- *“Consultation with Native American Indians, Canadian Indians, Hawaiians and Maori to ensure what did not work isn't bought forward into the ATSI Treaty and what did work is built upon.”*
- *“I would be interested to know what has worked in other countries where they have treaties, and what improvements we could make when implementing these in South Australia.”*
- *“What are the successful treaties that have been used by other Indigenous peoples around the world and use them as a template for the initial negotiation phase.”*
- *“Look at the New Zealand model to ascertain what we can learn from their treaty.”*
- *“This shouldn't mean we halt the journey to recognition in the Australian Constitution - they can progress as two important streams of work.”*
- *“Given the complexity of treaties in connection with the Constitutional recognition, there needs to be consultation with a Constitutional expert to ascertain how the treaty and Constitution would affect each other.”*
- *“If a treaty like New Zealand or some of Canada's could be devised it would in some way give greater assurance to Aboriginal people to have a much clearer idea of what they can expect into the future.”*

2.3.3. Truth and Redress

Common themes:

- **Acknowledge Aboriginal people as the first peoples and nations of the State.**
- **Recognises Aboriginal people as traditional owners and occupants of lands and waters, and the ongoing importance of their spiritual, social, cultural and economic practices.**
- **Provide a true account of past injustices and wounds of the past and their ongoing effect.**
- **Re-set the relationship and work together as a partnership on equal terms.**

Comments from Written Responses:

- *“Because I think it is time for Aboriginal people to be considered equal as Australians. My dad was classed as flora and fauna, until a treaty Aboriginal people feel like they are second best.”*
- *“Treaty should set out overarching, high-level, rights-based principles that recognise the unique and enduring place of Aboriginal people in the culture and history of South Australia.”*
- *“To right past wrongs and give some sort of solace to my First Nations people. A treaty should have been put in place when Cook first landed.”*
- *“To finally recognise Aboriginal people as First Nation people and establish a framework for future partnerships with Aboriginal People.”*
- *“There should be acknowledgement that Aboriginal people have not got their land back; are less likely to own their own homes and are struggling physically and emotionally while others benefit from the resources on their land – be they mineral, energy, food or natural resources.”*
- *“Have copies of the Treaty on public display in all government offices and service centres (e.g. schools, police stations, hospitals) and in Council buildings and public libraries.”*
- *“I hope we can find a way to work together and obtain true equality, I also hope this allows healing and personal growth amongst the Aboriginal Community.”*
- *“A way of acknowledging on behalf of the citizens of South Australia that over time Aboriginal people have suffered and been disadvantaged by widespread systemic failings.”*
- *“We are not doing enough to recognise and address the harm that has been, and continues to be, done to Indigenous Australians. A treaty is a meaningful step in the right direction.”*
- *“There has to be fairness, respected and understanding of this Treaty. This Treaty has to involve the Past, the Present and the Future.”*
- *“The true history of white settlement of SA. The intentions of the first European settlers and the English government when they decided to take over management of the land.”*
- *“Un-write the wrong of the past, injustices the massacre's, loss of land country, family, language, culture, etc.”*

2.3.4. Social Issues

Common themes:

- **Work in partnership on Aboriginal health, education and employment outcomes.**
- **Focus on education to create intergenerational benefit in future.**
- **Educate all South Australians about unique Aboriginal spiritual, social, and cultural customs.**
- **Teach Aboriginal language and a true account of Aboriginal history in schools.**

Comments from Written Responses:

- *“Treaty should redress the colonial impact on Aboriginal culture by providing improvements in access to healthcare, land ownership, energy technology, language revival and food.”*
- *“We need to be equals and not treated as second class citizens.”*
- *“A statement that government will work to tackle the disadvantage and equality that Aboriginal South Australians experience.”*
- *“Increased regional funding and services to keep Indigenous Australians connected to their land and their culture.”*
- *“Under a Treaty I would like to see more programs to deal with the everyday lives of Aboriginal People that are the forgotten ones, for instance more programs around health and tackling education and health programs.”*
- *“More funding for targeted programs with intergenerational trauma in mind”*
- *“Please don’t forget about the fulla’s who live in the country areas/remote as they are the ones feeling most at risk, vulnerable etc.”*
- *“Use the treaty as an opportunity to teach everyone about the rich culture”*
- *“Perhaps an educational package for schools across South Australia, so that the wider population has access to the information regarding our true history and the implications of that history on Aboriginal people.”*
- *“If you teach the children, they will teach their parents and grandparents. This is an opportunity not to alienate people or create fear based on misconceptions, this is an opportunity to build relationships and heal this land and all its people from past and present injustices.”*
- *“Recognise Aboriginal languages in schools. Teach Aboriginal languages in schools. Include Aboriginal cultural awareness training as part of all citizenship tests and in schools.”*
- *“Educate non-Aboriginal people on why there is a need for a treaty. The more people who are informed, the more likely they to tell others and have conversations.”*
- *“Our culture has much knowledge to impart and I want to share it in positive ways that Empower Aboriginal South Australians and the greater community.”*
- *“I would like more understanding/promotion of our culture in a positive light in particular in a more intellectual way. We get so much 'bad' publicity and are perceived by a lot of people as inferior or primitive but that's not the case at all. Our culture had philosophy, mathematics, science etc. it was just sometimes expressed differently and that needs to be documented (in a culturally appropriate way) so that it is respected and seen as equal to western cultures.”*

2.3.5. Economic Empowerment

Common themes:

- **Greater opportunity for Aboriginal people to prosper from co-management of their land and water, and ensure its protection for future generations.**
- **Creating conditions for Aboriginal people and nations to thrive, not a one-off transfer.**
- **Breaking traditional reliance of Aboriginal groups and nations on Government grants.**
- **Ensuring any agreement will enable future generations to prosper.**

Comments from Written Responses:

- *“Treaty will allow Aboriginal peoples to be economically self-determining.”*
- *“As Aboriginal people we need to ensure that our rights are in place forever and not be dependent on the good will of the government of the day.”*
- *“Recognition of Aboriginal people's spiritual and economic rights to land and seas.”*
- *“Greater access to water allocations, mineral rights, heritage protections, preservation of languages and Crown Land incorporated into the Aboriginal estate will enable greater economic participation and recognise unalienable rights of First Nations Peoples.”*
- *“We need to explore all possible options as previously mentioned and revisit things such as establishing an Aboriginal Future Fund here in SA managed and controlled by Aboriginal people via a Terms of Reference that we all agree to.”*
- *“We should steer away from using compensation and focus on benefits.”*
- *“I see a Treaty away to build a framework that provides opportunities for Aboriginal Nations.”*
- *“Focus on addressing inter-generational dependency on government support. There will be more equality when the Indigenous community is equally contributing to society.”*
- *“A formal Treaty could provide a formalised and useful tool and process for the Aboriginal people of South Australia to negotiate, leverage and access socio/economic, legal, health and education opportunities for all.”*
- *“For a better outcome for the next generation to come...more employment opportunities and housing all big impacts on our lives.”*
- *“Treaty is the first step to the future for Aboriginal people and Australia as a country. This will be the foundation in which will enable Aboriginal people to protect their land and culture for future generations.”*
- *“To help pave the way for the future of Aboriginal people in our next generation.”*
- *“All the benefits are shared out equally to all Aboriginal South Australian groups.”*
- *“Unique set of laws and policies which need to reflect that, as it relates to land rights, culture and language, employment, infrastructure and so on.”*

2.3.6. Autonomy and Decision-making

Common themes:

- **Aboriginal self-determination as a starting point for treaty.**
- **Treaty to recognise sovereignty of Aboriginal groups and nations.**
- **Decisions in partnership with Aboriginal people, not decisions made for Aboriginal people.**
- **Different Aboriginal groups to negotiate according to their needs and desires.**

Comments from Written Responses:

- *“Nation building based on sovereignty - individual nations should be supported to treaty with each other, the government need to step back and let Aboriginal people lead.”*
- *“At a bare minimum a treaty should include principles related to empowerment and self-determination of Aboriginal peoples of South Australia.”*
- *“After visiting other first nations in other countries who have treaties I can see the benefit treaties provide with self-governance and empowerment for them and would like the same here - we are so far behind the 8 ball when it comes to our self-governance in comparison to other Commonwealth First nations peoples!”*
- *“A treaty would hopefully give Aboriginal peoples greater control over issues impacting us, I would anticipate it would give us greater access to our Country and self-governance.”*
- *“A statement that Aboriginal people are equals at the table in discussions with government.”*
- *“A requirement that government engages and consults with the Aboriginal community when making decisions that affect Aboriginal people.”*
- *“It should be made clear to ALL who enter our lands, that we are a Sovereign Nation, and always have been.”*
- *“More important our sovereignty continues to exist and there is a need to acknowledge same through agreement.”*
- *“Sovereignty has never been ceded. The 'settlement' of Australia was founded under an inconvenient truth. Aboriginal people are the rightful owners of this Country and a Treaty is an appropriate legal option available to remedy past errors.”*
- *“I believe a treaty is an essential step in Aboriginal people in South Australia being recognised for their unique identity in our state, and indeed around the country and internationally, as a people who never ceded their sovereignty, or rights, as the first peoples of this country.”*
- *“Aboriginal peoples are not all the same, we have different languages, belief systems and cultures. Its' up to individual Nation groups to decide what they choose to do, rather than have others choose it for them.”*
- *“Needs to come from bottom up not dictated from top to bottom otherwise it is not our treaty but the government. I do not want my sovereign rights to be taken from my family.”*
- *“Aboriginal people must be listened to and respected on what they see is essential in their treaty with the government.”*

2.3.7. Representation and Governance

Common themes:

- **Work with Aboriginal groups to help build capacity for treaty discussions and self-governance.**
- **Aboriginal treaty leadership to be accepted to speak for people it represents.**
- **Negotiations with select groups could leave others behind or cause conflict.**
- **Aboriginal leadership should have balance of gender and age (Elders and youth).**

Comments from Written Responses:

- *“One Aboriginal nation cannot speak for another, their interests and aspirations are different.”*
- *“We need to understand who in the Aboriginal community feels they have the voice and power to enter into a treaty on behalf of their community. If we cannot identify who the negotiations could occur with, then this process will be difficult to achieve.”*
- *“Ensure that no Aboriginal South Australians are excluded, which would occur if negotiations are limited to native title, Traditional Owner or Aboriginal Regional Authority groups.”*
- *“Multiple treaties would divide the Aboriginal community because not all groups have the same expertise and expertise at negotiating with government or the same resources at their disposal.”*
- *“Would prefer the government focused on mediating differences and building capacity in Aboriginal communities, so that fully informed discussion and solutions can be arrived at together and as a collective.”*
- *“There is a strong likelihood that the more experiences and better resourced groups would be able to negotiate more favourable and comprehensive treaties, which could lead to feelings of ill will and conflict in the Aboriginal community.”*
- *“Government (should) provide support and resources to the Aboriginal groups involved in Treaty discussions so they all have a similar negotiating capacity (i.e. so there is a level playing field).”*
- *“More support to communities to enable them to improve their community governance. Treaty should not be seen as a full and final settlement.”*
- *“It's the first steps towards having representation (permanent national body) and potentially shared power through allocated seats in the house of representatives.”*
- *“Each Aboriginal Nation have their leaders to advocate on behalf of that nation, the Treaty should have capacity to change with time, cause no doubt as time goes by our needs will most definitely change.”*
- *“Each group within SA will need to come to some decision about what they hope to gain from entering into a treaty with the government, what it will look like for them, how it will be enacted and how it's success will be measured.”*
- *“A State Aboriginal Advisory body to provide input into future legislation, laws and reforms etc.”*
- *“It is very important to capture the views of young Aboriginal people because any treaty that is developed now will be for future generations”*
- *“Set up subgroups, with a balance of female, males, youth and elder representatives.”*
- *“Maybe developing an action committee to assist the Commissioner and team.”*

3. Proposed Framework

This section addresses the Treaty Commissioner’s remit to provide advice to the Minister on a suitable framework to enable treaty negotiations to begin. This framework does not consider the framework in which the negotiations will take place nor the ultimate policy approach that the State government will take when it approaches the negotiations.

In recommending a possible path forward, the common themes from engagements and research undertaken about other Commonwealth nations have been considered. In coming to the table to discuss treaty, each party must have a clear understanding of what a treaty means and its purpose.

A ‘treaty’ is traditionally an agreement between sovereign nations. Verbal and written evidence received and international best practice suggests a treaty between States and its First Peoples stands the best chance of meaningful and lasting success when those parties come together from a position of self-determination.

Whilst there are legal limits on the State’s ability to make sovereign-to-sovereign agreements, an agreement could still be made between the State and groups of Aboriginal people for purpose of recognising the arrival of people in South Australian land that was already occupied by distinctive Aboriginal societies, and to reconcile this fact with the assertion of sovereignty by non-Aboriginal people.

Our Aboriginal community comprises a diverse range of language groups, belief systems and cultures. Many of these groups identify as nations, by which a process of self-determination has already been demonstrated. Self-determination could be defined for the purposes of treaty in South Australia as including but not limited to:

- Shared identity, language, laws and customs;
- Historical exercise of control over country, language, and/or culture;
- Historical existence as a governing and/or cultural authority;
- Reasonably sizable body of people to sustain negotiation; and
- Shared common objective(s) to achieve the group(s) ongoing aspirations.

Importantly, treaty discussions to date have been well-received by the community as they have been Aboriginal-led and independent of Government. With those principles in mind, the Treaty Commissioner recommends the following key elements of a framework that will enable those first steps to treaty negotiations to taken:

1. Eligibility criteria for Aboriginal groups and nations to apply to negotiate a treaty.
2. Call for Expressions of Interest (EOI) from groups and nations according to the above eligibility criteria.
3. Establish an independent and all-Aboriginal Treaty Advisory Committee. (Please refer to accompanying Minute regarding proposed Membership and Terms of Reference).
4. Advisory Committee assess EOI applications from Aboriginal groups and nations per the EOI and makes recommendations to the Minister for consideration.



3.1. Eligibility Criteria

An Aboriginal group or nation aspiring to be a party to treaty will represent the voice of its Aboriginal members in treaty negotiations and throughout its ongoing implementation. Informed by feedback received from the Aboriginal community and its own research, the Treaty team recommends the following set of criteria for groups and nations seeking to enter treaty negotiations.

#	Criteria	Examples
1	Name	<ul style="list-style-type: none"> Name of group or nation, address, contact person.
2	Treaty Aspirations	<ul style="list-style-type: none"> Why your group or nation wants Treaty. What is expected to be achieved. How organised to engage in treaty process.
3	How organised and established	<ul style="list-style-type: none"> Incorporation and constitution. Clearly defined scope and purpose. Regular meetings, annual reports. Communication processes (including treaty progression).
4	Who group or nation represents	<ul style="list-style-type: none"> Who the group or nation represents. Membership lists and how membership is established.
5	Boundaries	<ul style="list-style-type: none"> Mapped or in writing Describe if there are any areas of overlap and/or partnership, and how this will be addressed.
6	Authority to negotiate treaty	<ul style="list-style-type: none"> Copy of motion by group or nation's leadership to engage with treaty process. Letters of support from members and/or other parties.
7	Balance View	<ul style="list-style-type: none"> How balanced views will be included represented in treaty process, including but not limited to: <ul style="list-style-type: none"> Age Youth Elders Gender
8	Cultural Framework	<ul style="list-style-type: none"> Outline of group or nation's statement of: <ul style="list-style-type: none"> Cultural values Language status Cultural norms Provide details of how each of these will be addressed.

The above criteria and examples aim to balance the community's aspirations for a rigorous and fair process with the understanding that Aboriginal groups and nations already face significant administrative responsibilities from Government.

3.2. Expressions of Interest - Application to Enter Treaty Negotiation

It is recommended Expressions of Interest (EOI) to enter treaty negotiation are welcomed per the eligibility criteria. Nominations are recommended to be formally assessed against the eligibility criteria by an independent Aboriginal Treaty Advisory Committee as described in the following section.

3.3. Establish Aboriginal Treaty Advisory Committee

It has been noted that as an Aboriginal-led and independent engagement program, the Treaty team's activities were well received by the community at large. A broad lack of trust in Government processes has also been observed in the Aboriginal community as a common engagement theme.

To build upon the trust and credibility of the treaty process established by the Treaty Commissioner to date, it is recommended an independent Aboriginal Treaty Advisory Committee is established to conduct the following:

- Assess EOI applications from Aboriginal groups or nations against the eligibility criteria;
- Make recommendations to the Minister with respect to acceptability or otherwise of those applications; and
- Provide high-level strategic advice regarding next stages of the treaty processes.

The Committee may be appointed by the Minister having regard for gender balance. The Treaty Commissioner will convene this Committee as Chairperson.

3.4. Assess EOI applications and recommendations to Minister

The Committee will assess all EOI applications received in accordance with the eligibility criteria. In carrying out its assessments, the Committee may request further information of EOI applicants at its discretion.

The Committee will then make recommendations to the Minister. In appointing candidates to the next stage of treaty negotiation, it is recommended that the principles of procedural fairness are given consideration.

3.5. Future Steps

This report has focused on the criteria to bring groups or nations to the table to commence the next stage to treaty negotiations. In coming to the table, it is recommended that there are clear rules about how the parties interact during those future stages, and that a mandate to carry out and complete negotiations on behalf of the people the party represents is demonstrated.

Evidence provided by community and research undertaken strongly suggests the following principles and aims should be applied to the negotiation:

- Partnership: recognising that the treaty establishes a partnership and sets the expectation that parties will act reasonably and in good faith in their dealings with each other.
- Self-management: recognising that autonomy of Aboriginal people in decision-making, and free informed and prior consent are an objective of negotiations.
- Truth and redress: recognises Aboriginal people as the First Peoples of the State of South Australia, and to re-set the relationship and work together in partnership on equal terms.
- Co-operation: recognition that parties will come from different perspectives but are required to strive to reach a unified perspective.
- Any other principles or aims that may be agreed between the parties.

Conclusion and Recommendations

This report demonstrates there has been a very strong appetite, passion and high-level of engagement from Aboriginal people across the State to discuss what a treaty may mean to them.

It is important the momentum gained through the engagements about treaty is sustained throughout the Aboriginal and broader community. The following recommendations are made for your consideration:

- 1. The Treaty team continue consultations throughout the State.**
- 2. That the key elements of a framework contained within this report enabling first steps to treaty negotiations to be taken are considered for approval.**
- 3. That the Minister considers the principles recommended under the heading of 'Future Steps' in the Report to inform the approach to treaty negotiations.**
- 4. That the Minister recommend this report be made public to the Aboriginal community.**

The Treaty Commissioner and staff would like to thank the many people who have contributed to the consultations through meeting with us, talking to us on the telephone or completing the on-line survey.