

# Foreword

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A treaty between Indigenous and non-Indigenous Australians has been a continuing issue both because of the failure of the modern Australian state to recognise and respect the sovereignty of Aboriginal nations and because of the continuing failure to protect the rights of Aboriginal people.

The recognition of prior ownership and sovereignty – and the rights and interests that flow from that – are part of the symbolic importance of an agreement between Aboriginal and non-Aboriginal Australians, the potential for a treaty to protect the rights of Aboriginal people ensures that it has practical and meaningful outcomes for Aboriginal people. Particularly while Aboriginal people experience poorer health, higher levels of unemployment, lower levels of education, poorer housing and higher rates of poverty, the potential for a treaty to provide a fairer playing field for Aboriginal people is an important agenda.

A large part of the socio-economic disadvantage experienced by Aboriginal people can be attributed to past government policies that actively discriminated against Indigenous people and sought to – directly or indirectly – exclude Aboriginal people from full participation in Australian life.

More recently, the momentum for a treaty gathered again at the end of the decade of reconciliation. ATSIC Chairperson Geoff Clark had placed the notion of an agreement between Aboriginal and non-Aboriginal people clearly back on the agenda at Corroboree 2000 and the Council for Reconciliation, in its Final Report, recommended that a treaty process be developed as part of the on-going work of reconciliation.

While the decade of reconciliation seemed to raise awareness of the importance of renegotiating the playing field between Aboriginal people and other Australians, the Howard government have, from the start, clearly rejected the notion of a treaty and the rights framework that underpins it. Of course, it is a compelling rhetorical claim that talk of treaties, rights and constitutional change does not put food on the table or end high levels of violence in the community. It is easy, when placed in that light, to dismiss the focus on the human rights agenda, especially the treaty, as the privilege of the elite. This is especially so when we see articles published every day noting the increase in incarceration rates, the high levels of violence within Indigenous communities and the continuing poor levels of health and access to education.

But we must not lose sight of the necessity for the symptoms that we treat not to be the only things we target. We need to make sure that we are also attacking the causes. And that comes only through systemic and structural changes and through the protection of the rights agenda. Aboriginal leaders such as Jack Patton and William Cooper, Aden Ridgeway and Mick Dodson have always held the position that the recognition and enjoyment of rights are required if any real, meaningful and sustainable progress is to be attained.

What the issue of a treaty does is to provide a focus point on which to continue our discussion about the relationship between Indigenous and non-Indigenous people. It provides a forum for the consideration of legal issues such as rights and reparations. It also provides a platform from which to decide the kind of Australia we would like to be. It allows us to look at the big picture issues and articulate what an Indigenous vision of a reconciled Australia would be. This will include issues as broad ranging as equality rights, native title, economic rights, rights to hunt and fish, rights to education and to work and rights to self-governance and autonomy.

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I have always supported the treaty dialogue because I think we have a responsibility as Indigenous people to articulate an answer to the question: “What is it that you want?” Unless we can answer that, we cannot engage in a negotiation with non-Indigenous Australia about the appropriate way forward. There will be no on-going, meaningful dialogue about reconciliation.

But non-Indigenous people have much to gain from a treaty with Aboriginal people too. A treaty can help to change this relationship by giving us the recognition and respect that Aboriginal people deserve. This idea of recognition and respect through a formal process of a treaty is often referred to as nation-building – as a way of making a stronger, more united and more tolerant society.

There is a strong view that has been put forward by Marcia Langton and Fred Chaney that, particularly in relation to native title, Aboriginal communities are engaged in negotiating with non-Aboriginal interests and governments. This, they point out, highlights how agreement making can result in positive outcomes for both parties and this provides insight into the positive benefits that a treaty – or a series of treaties – could have. They are, after all, negotiated agreements. This plethora of agreement making with Aboriginal people also shows that such negotiated processes are not divisive, as critics often claim, but can create opportunities to empower Aboriginal communities and create a win-win situation.

There are, also, many concerns about a treaty. Questions like what would a treaty look like, who would have the mandate to sign a treaty and what a treaty or treaties would contain are all questions that the treaty debate throws up.

Whether to have a treaty, what it would look like and what it would contain are important debates and it would be a shame if we were to lose momentum now that ATSIC has been abolished. In fact, it is all the more important that such a discussion continue even though there is no political leadership from the federal government about the relationship between Indigenous and non-Indigenous Australians. This book will make a substantial contribution to those dialogues.