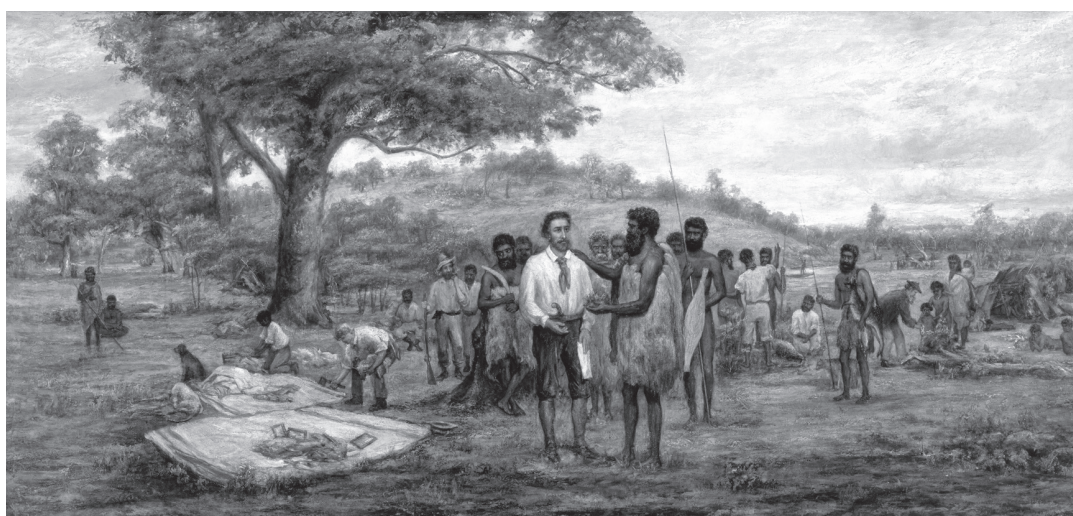


# **What Good Condition?**



# What Good Condition?

Reflections on an Australian  
Aboriginal Treaty 1986–2006



THE AUSTRALIAN NATIONAL UNIVERSITY

E P R E S S

**Aboriginal History**  
**Monograph 13**

Edited by Peter Read,  
Gary Meyers and Bob Reece



### **Aboriginal History Incorporated**

Aboriginal History Monograph 13

National Library of Australia Cataloguing-in-Publication entry

What good condition? : reflections on an Australian  
Aboriginal treaty 1986-2006

ISBN 1 920942 90 4 (pbk)

ISBN 1 920942 91 2 (online)

1. Aboriginal Australians - Treaties. 2. Aboriginal  
Australians - Civil rights. 3. Aboriginal Australians -  
Land tenure. 4. Aboriginal Australians - Government  
relations. I. Read, Peter, 1945- . II. Meyers, Gary D.  
III. Reece, Bob, 1940- . (Series : Aboriginal history  
monograph ; no. 13).

323.119915

### **The Committee of Management and the Editorial Board**

Peter Read (Chair), Rob Paton (Secretary/Treasurer), Jennifer Clarke (Public Officer), Richard Baker,  
Gordon Briscoe, Ann Curthoys, Mick Dodson, Brian Egloff, Geoff Gray, Niel Gunson, Luise Hercus,  
Dave Johnston, Steve Kinnane, Harold Koch, Isabel McBryde, Ann McGrath, Ingereth Macfarlane,  
Francis Peters-Little, Deborah Bird Rose, Gary Shipp

Aboriginal History is administered by an Editorial Board which is responsible for all unsigned  
material. Views and opinions expressed by the authors of papers are not necessarily shared  
by Board members.

Managing Editor: Ingereth Macfarlane

Copy Editor: Gillian Fulcher

Aboriginal History Inc. is a part of the Australian Centre for Indigenous History, Research School  
of Social Sciences, The Australian National University and gratefully acknowledges the support  
of the History Program, RSSS.

This publication was supported by a generous subsidy from the Aboriginal and Torres Strait  
Islander Commission

### **Contacting Aboriginal History**

All correspondence should be addressed to:

Aboriginal History, Box 2837 GPO Canberra, 2601, Australia.

### **Sales and orders for journals and monographs, and journal subscriptions:**

T Boekel, email: [sales@aboriginalhistory.org](mailto:sales@aboriginalhistory.org), tel or fax: +61 2 6230 7054

[www.aboriginalhistory.org](http://www.aboriginalhistory.org)

### **ANU E Press**

All correspondence should be addressed to:

ANU E Press, The Australian National University, Canberra, ACT 0200, Australia.

email: [anuepress@anu.edu.au](mailto:anuepress@anu.edu.au), <http://epress.anu.edu.au>

**Cover:** *Batman's treaty with the aborigines at Merri Creek, 6th June 1835*

Artist: John Wesley Burt, 1839 - 1917 (Collections: State Library of Victoria)

**Design and typesetting** by might.Graphic Design

**Printing** in Australia by University Printing Services, ANU

Apart from any fair dealing for the purpose of private study, research, criticism or review, as permitted  
under the Copyright Act, no part of this publication may be reproduced by any process whatsoever  
without the written permission of the publisher.

This edition © 2006 Aboriginal History Inc. and ANU E Press

**Aufidius:** The town is ta'en!

**First Soldier:** 'Twill be deliver'd back  
on good condition.

**Aufidius:** Condition!...  
What good condition can a treaty find  
I' the part that is at mercy?

*Shakespeare, Coriolanus I.IO*



# Contents

<i>Peter Read</i>	What good condition?	<i>ix</i>
<i>Larissa Behrendt</i>	Foreword	<i>xi</i>
<i>Steven Churches</i>	Put not your faith in princes (or courts) – agreements made from asymmetrical power bases: the story of a promise made to Western Australia’s Aboriginal people	<i>1</i>
<i>Ravi de Costa</i>	National encounters between Indigenous and settler peoples: some Canadian lessons	<i>15</i>
<i>Peter Read</i>	Doubts about the treaty	<i>31</i>
<i>William Jonas</i>	Reflections on the history of Indigenous people’s struggle for human rights in Australia – what role could a treaty play?	<i>41</i>
<i>Roderic Pitty</i>	The political aspects of creating a treaty	<i>51</i>
<i>Tim Rowse</i>	From enforceability to feel-good: notes on the prehistory of the recent treaty debate	<i>71</i>
<i>Sue Stanton</i>	The challenge for Australia: reconciling the treaty	<i>89</i>
<hr/>		
<i>Eddie Mabo Jnr</i>	A treaty for whom?	<i>99</i>
<i>Michael Dodson</i>	What is a treaty?	<i>105</i>
<i>The Hon David Malcolm AC</i>	Treaty: advancing reconciliation?	<i>123</i>
<i>Garth Nettheim</i>	International Human Rights: bases for Indigenous rights	<i>135</i>
<i>Stephen W Robson</i>	Consent: common law and native title	<i>157</i>
<i>The Hon Justice Michael Barker</i>	‘Treaty’: what’s in a name?	<i>163</i>
<i>The Hon Justice Ralph Simmonds</i>	Customary Law and treaty	<i>171</i>
<i>Lisa Strelein</i>	Missed meanings: the language of sovereignty in the treaty debate	<i>177</i>
<hr/>		
<i>Greg McConville</i>	Regional agreements, higher education and representations of Indigenous Australian reality	<i>191</i>
<i>Greg McIntyre</i>	Native title holding communities as treaty parties	<i>207</i>
<i>Richard Ah Mat</i>	The Cape York view	<i>221</i>
	The Coolangatta Statement on Indigenous peoples’ Rights in Education	<i>229</i>
	Biographical notes	<i>237</i>