



Submission to the NSW Treaty Commission

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Treaty Council Worldwide and Baramadagal Darug Tribal
Governing Council

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The Authors

This submission is made by the Treaty Council Worldwide and the Baramadagal Darug Tribal Governing Council in alignment with nation re-building work we do, to assist mob around the continent, including across lands now known as New South Wales (NSW), in nation-rebuilding efforts.

We practice and support Aboriginal nation re-building across NSW as the foundation for Treaty. Treaty must occur between two or more sovereign parties; Aboriginal nations, opposed to pan-Aboriginal concepts within colonial frameworks i.e., “Indigenous Australians”, must therefore be recognised as primary Treaty partners.

Context: Truth-telling and Position

Truth-telling must come first. Without it, the wound remains uncleaned, infection takes hold, and collective healing cannot take place.

On the lands of Baramada / Burrumatta (Parramatta), as is the case across Darug Country, colonisation has not been a past event but an ongoing structure. The attempted erasure of

Darug-speaking peoples through early invasion, displacement, and urban development has been followed by legal and administrative systems that continue to deny the existence of living Traditional Owners /Custodians in the Sydney Basin Area.

Frameworks such as Native Title have largely excluded metropolitan based mobs across the continent including Darug peoples, not always because of an absence of connection, but because the evidentiary thresholds imposed by the State cannot properly account for the scale and intensity of genocide experienced here. In their place, State-created structures such as Local Aboriginal Land Councils (LALCs) have been positioned as representative bodies, despite being constituted within and accountable to the very system that displaced our governance.

For Baramadagal Darug-speaking peoples, nation-rebuilding is actively reasserting genealogical continuity, kinship systems, and cultural connection and authority that have persisted despite deliberate attempts to sever these aspects of our lives, either partially or in whole. Our governance work is grounded in lived experience with our mudjin (family), ngurra (Country), and in fulfilling our ongoing cultural responsibilities.

We support Treaty in New South Wales in principle. However, Treaty must be grounded in truth, and must recognise Aboriginal nations as they exist and are actively re-building today. Without this, Treaty risks proceeding on the same false premises that has enabled the ongoing denial of the Darug-speaking peoples' sovereignties.

For this reason, this submission moves beyond an expression of support, and we will outline the conditions we see as necessary for Treaty to engage with Aboriginal sovereignty as it is currently lived and practised.

1. Nation-building as precondition for Treaty

Nation re-building is a precondition for Treaty.

Treaty processes must prioritise:

- recognition of Aboriginal nations as they are actively reconstituting governance.
- support for nation-based institutional development.
- engagement with living cultural and political authority.

Treaty is not the starting point of sovereignty; it must engage with sovereignty as it is has always existed and is already being exercised in the fact of ongoing colonization through nation-rebuilding.

2. Limits of existing legal frameworks

Existing legal frameworks provide mechanisms for recognition, but do not adequately transfer authority or enable Aboriginal governance.

- **Register of Aboriginal Owners (NSW)**

The Register of Aboriginal Owners in NSW, maintained by the Office of the Registrar under the Aboriginal Land Rights Act 1983 (NSW), identifies individuals with recognised traditional connections to within a defined cultural area. In practice, this is often a lengthy and resource-intensive process.

While the Register provides an avenue for formal recognition, it is dependent on LALCs commencing the process. Further, It operates primarily as an administrative and land management mechanism within a state-controlled system, formalising participation rather than enabling Aboriginal governance (grounded in sovereignty) over land, resources, or decision-making.

- **2. Native Title**

Native Title provides a limited legal recognition of rights and interests in land; however, it does not recognise Aboriginal sovereignty. Its application is particularly constrained in urban and heavily developed areas, where “extinguishment” is said to have occurred.

As a result, Native Title can offer minimal pathways for governance, land return, or economic participation for Traditional Owners / Custodians.

Treaty processes must not be constrained by assumptions of extinguishment or administrative recognition alone. Instead, this requires moving beyond legal minimisation of sovereignty toward recognition of its culturally grounded persistence.

3. Criteria for Treaty engagement

Treaty engagement should be grounded in:

- verified genealogical connection to Country at or near the time of invasion.
- continuity of kinship, cultural, and familial systems despite colonial disruption.
- active participation in nation re-building and governance organisation recognised by broader Aboriginal and Torres Strait Islander communities.

4. Existing nation governance structures

Aboriginal nations are already actively practicing governance systems across NSW and Australia and developing technologies and structures to make traditional ways of relating and being visible to be interacted with in the current times.

Other positive examples include nation-building models such as those developed by the Guditjmara and Ngarrindjeri Nations, which are unceded lands in colonial States now known as Victoria and South Australia respectively.

The Treaty Council Worldwide supports Nations asserting sovereignty through:

- genealogical verification processes
- constitutional and governance development support
- inter-nation agreements and frameworks
- legitimacy assessment grounded in cultural authority and continuity.

5. Proposed governance architecture for Treaty

We propose a nation-based governance model, including:

- nation-level governing bodies (i.e. Tribal Governing Councils or the like) as primary Treaty interlocutors
- a peak coalition of nation organisations for coordination and representation
- direct nation-to-Crown negotiation pathways.

6. Separation of Treaty from service delivery systems

It is essential to distinguish Treaty from state service systems. Housing, health, policing, child protection, and related sectors are administrative functions of government service delivery; they are not Treaty-making domains.

Treaty must operate within a distinct constitutional and political space concerned with:

- sovereign relations
- political recognition
- nation-to-nation agreement-making

Conflating Treaty with service delivery risks reducing it to administrative reform, rather than recognising it as a process of political and sovereign negotiation.

7. Land, economy, and sovereignty infrastructure

We have developed an [Allodial Land Use Register](#) (ALUR), established in partnership with Land Equity International, aligned with UNDRIP, specifically Article 26(3) which supports recognition of Indigenous land tenure systems and governance structures.

The Treaty Council with the support of the Baramadagal Darug Tribal Governing Council is implementing this system as a parallel land governance record alongside Crown systems.

8. Institutional recognition and limitations of statutory Aboriginal governance structures

The NSW Treaty Commission must engage with emerging nation-based governance organisations, not solely statutory Aboriginal bodies.

LALCs are structurally constrained and increasingly operate as administrative extensions of the settler-colonial framework rather than expressions of sovereign authority.

Treaty engagement must therefore include:

- independently organised nation governance bodies
- emerging Aboriginal constitutional institutions
- culturally grounded governance systems operating outside statutory frameworks.

9. International alignment

The guidance in this submission aligns with principles articulated by the UN Special Rapporteur, including the recognition of Indigenous peoples as self-determining political entities.

We draw attention to the UN Special Rapporteur's 2017 observations regarding Australia's Native Title system:

“In order to succeed, claimants under the Native Title Act must prove that they have had an uninterrupted connection to the area being claimed, and that they have continued to practice their traditional laws and customs. This is an extraordinary challenge and burden of proof in the context of the historical forced removal and dispossession policies of Australia.”

The Rapporteur further recommended that Australia:

“Review the system with multiple and overlapping legal regimes applicable to native title claims at the federal, state and territory levels, with a view to aligning them with the United Nations Declaration on the Rights of Indigenous Peoples, which does not contain norms requiring proof of continuous occupation of land.”

This is significant, as existing colonial legal frameworks in Australia do not align with international standards set out in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), particularly in relation to self-determination and land rights.

The current scoping process for Treaty in NSW presents an important opportunity to critically assess how existing systems continue to constrain and hinder sovereign aspirations, and to identify what is required to properly ground Truth-telling and Treaty processes in cultural authority and international human rights standards.

Conclusion

We support Treaty processes that enable genuine nation-to-nation engagement grounded in sovereignty, governance, and nation-rebuilding work.

Without these foundations, Treaty risks reproducing administrative frameworks rather than achieving meaningful constitutional transformation.

Kind Regards



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