

TASMANIA
LUTRUWITA TREATY BILL 2023
CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Purposes
4. Interpretation

PART 2 – The Treaty Commission

Division 1

5. Establishes one full-time and two part-time Commissioners

PART 3 – Functions of Treaty Commission

6. Provides for main function, consultation and methods to be employed, and time-frames
7. Powers of Treaty Commission to control its external and internal operation
8. Performance of functions and exercise of powers within and outside Tasmania

Division 2—Specific powers

9. Provides for employment of staff and engagement of consultants
10. Provides for Premier to appoint Treaty Commissioners
11. Conditions of appointment and delegation
12. Division 3—Financials including employment of staff
13. **Division 4**
14. Immunities
15. Draft Treaty for consultation

Part 1—Preliminary

1 Short Title

LUTRUWITA TREATY BILL 2023

(Brought in by the Premier the Honourable Jeremy Rockliff)

A BILL FOR

An Act to establish a Treaty Commission, to promote the development of a treaty between Lutruwita Aboriginal people and the State of Tasmania, and for related purposes

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before [date to be named], it comes into operation on that day.

3 Purposes

The purposes of this Act are—

- (a) to advance the process of treaty making between Lutruwita Aboriginal people and the State of Tasmania; and
- (b) to provide for a Treaty Commission to begin the process of making a treaty between the parties; and
- (c) to enshrine the guiding principles for the treaty process; and
- (d) to require the Treaty Commission to consult widely about a draft treaty and report back to the Parliament on its findings.

4 Interpretation

Aboriginal means a person who is descended from an original inhabitant of Australia, identifies as an Aboriginal and is accepted by the Aboriginal people of Tasmania as being Aboriginal. The onus of proof rests with a person who claims to be Aboriginal.

Aboriginal community means the Aboriginal people of Tasmania.

The Minister means the Minister appointed to administer this Act.

“workability” and “workable” means capable of producing the desired effect or result; practicable; feasible

[to be completed]

Part 2—The Treaty Commission

Division 1—Legal capacity, functions and powers

5 The Treaty Commission

- (1) The Treaty Commission is the entity established under this Act.
- (2) For the purposes of this Act, the Treaty Commission consists of one full-time Commissioner and two part-time Commissioners appointed in accordance with this Act.
- (3) All Commissioners must be Aboriginal. The Treaty Commissioner must be an Aboriginal person who has strong connections within the Aboriginal community and must have:
 - (a) demonstrated experience and expertise in Aboriginal affairs;
 - (b) strong, demonstrated research and analytical skills;
 - (c) Strong, demonstrated comprehensive stakeholder engagement skills.
- (4) The Minister shall appoint Commissioners as nominated by the Aboriginal community.
- (5) **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.

6 Functions of Treaty Commission

The Treaty Commission has the following functions:

(1) **Main function**

The main function of the Commission is to advance the prospects of a treaty between the Aboriginal people and the State of Tasmania by:

- (a) Developing a document of issues for the respective parties to consider;
- (b) Expanding and explaining the terms of the Draft Treaty for consultation contained in section 14;
- (c) Produce a treaty bill to parliament.

(2) **Consultation**

- (a) The Treaty Commission should consult widely including with business and other representative bodies, statutory authorities, Local Government, recreational user groups, civil society organisations, academics and members of the public. The Treaty Commission must produce consultation documents that further explain the history and context of the terms of the Draft Treaty to ensure experts, stakeholders and the community have the opportunity to contribute and comment.
- (b) In conducting consultations, the Commission may consult outside of Tasmania.

(3) **Timeframe for reporting**

The Treaty Commission should provide a consolidated final report to the Premier by 30 June 2024, and interim reports on each discrete matter as determined by the Treaty Commissioners or the Premier.

(4) **Consultation with Aboriginal representatives**

The Treaty Commission must meet with the Aboriginal community from time to time and as requested by the Aboriginal community.

(5) Method to be used

The Treaty Commission must use the Draft Treaty document in section 14 of this Act as the basis for conducting its consultations. The Commission must release a public discussion paper to facilitate informed discussions about a treaty.

(6) The Treaty Commission must consult as widely as is reasonably possible to determine the workability of the Draft Treaty taking account of:

- i. Any adverse impacts the Draft Treaty may cause; and
- ii. Where any adverse impacts are identified, to provide solutions that will enable a final treaty to be made.
- iii. through consultations with the broad Tasmanian community, to report on the workability of the terms of the Draft Treaty.

(7) The Treaty Commission may conduct research into issues or implications that may arise from the Draft Treaty or in any other way arising.

(8) Any other matter the Treaty Commission believes necessary to further the prospects of a treaty between the Lutruwita Aboriginal people and the State of Tasmania.

(9) Report to the parliament within two years of the date of proclamation of this Act and from time to time as determined by the Premier.

7 Powers of Treaty Commission

(1) The Treaty Commission has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

(2) Without limiting subsection (1), the Treaty Commission may—

- (a) Undertake research in relation to a Treaty and providing advice to government and Aboriginal people on best practice for Treaty negotiations;
- (b) Ensure that the broader public are engaged;
- (c) Manage the operations of the Treaty Commissioner's Office, including staff and budget allocations; and
- (d) Establish internal protocols and procedures, including reporting systems, to ensure information is communicated to government and Aboriginal people.

8 Performance of functions and exercise of powers within and outside Tasmania

The Treaty Commission may perform its functions and exercise its powers—

- (a) within and outside Tasmania; and
- (b) outside Australia.

Division 2—Specific powers

9 Employment of staff and engagement of consultants

Without limiting section 9(1), the Treaty Commission may—

- (a) employ any employees that are necessary to enable it to perform its functions or to exercise its powers; and
- (b) engage consultants to assist with the performance of its functions or the exercise of its powers.

10 Appointment of Treaty Commissioners

- (1) The Minister may, by Gazette notice, appoint an Aboriginal Treaty Commissioner, and the Premier may appoint Aboriginal persons to be assistant Commissioners.
- (2) The Minister may, by Gazette notice, appoint an Aboriginal member of the legal profession to be an assistant Commissioner.

11 Conditions of appointment

(1) The Treaty Commissioners hold office on the conditions, including conditions about remuneration, expenses and allowances, as determined by the Premier.

(2) The Treaty Commissioners conditions of office:

(a) cannot provide any conditions that are contingent on the Treaty Commissioner's performance in office; and

(b) cannot be varied during the Treaty Commissioner's term in office.

Delegation

The Treaty Commission, by instrument, may delegate a function or power of the Treaty Commission under this Act (other than this power of delegation) to a member or employee of, or consultant engaged by, the Treaty Commission.

Division 3—Financial

12 Funding of certain activities and expenditures out of the Consolidated Fund

Subject to subsection (2), in the 2022–2023 financial year and in every financial year after that year, there is to be paid out of the Consolidated Fund (which is appropriated to the necessary extent) an amount to be applied towards—

(a) the payment of the remuneration of and expenses to members of the Treaty Commission in the financial year in which the amount is appropriated; and

(b) fulfilling liabilities incurred by the Treaty Commission arising out of the performance of its functions or the exercise of its powers, or that attach to the Treaty Commission under section 18, that become payable in the financial year in which the amount is appropriated; and

(c) meeting costs incurred in relation to liabilities referred to in paragraph (b).

Division 4—Members and employees of the Treaty Commission

[to be completed]

13 Immunity

(1) A member of the Treaty Commission, or an employee of the Treaty Commission, is not personally liable for anything done or omitted to be done in good faith—

(a) in the performance of a function or exercise of a power under a delegation under section 15; or

(b) in the reasonable belief that the act or omission was in the performance of a function or the exercise of a power under a delegation under section 11.

(2) Any liability resulting from an act or omission that, but for subsection (1), would attach to a person to whom this section applies attaches instead to the Treaty Commission.

14 Draft Treaty for consultation

The Treaty Commission is required to use this draft of a treaty in performing its functions and powers to widely consult the people of Tasmanian/Lutruwita; to determine whether the terms of the draft treaty are workable taking into account any submissions or consultations made to the Commission; to identify from the consultations any issues or matters that may impede the making of a final treaty; and to report on changes that may overcome any impediment to the making of a final treaty.

1. Land

That, subject to existing leases or licences, and subject to existing public access or usage, the land areas named in Appendix 1 are to be returned in ownership to the Aboriginal people.

2. Seas and Waters

Subject to existing commercial and public interests and rights of navigation, Aboriginal people have the right to use and enjoy any fresh water rivers, lakes or streams and inter tidal waters.

3. Aboriginal culture and language

Aboriginal culture and language belong to the Aboriginal people. Its protection and use are the responsibility of the Aboriginal people and the state of Tasmania will give full force to assisting Aboriginal people to carry out this responsibility.

4. Aboriginal identity

Aboriginal people have the sole right to determine their identity or membership in accordance with their history and birth right. The state shall not impose or interfere with this right.

5. Empowerment

Examine methods of empowering the Aboriginal people within the scope of representative democracy (two designated seats in parliament) and how self-determination can be applied on returned lands and over sea and waters.

6. Guaranteed revenue

Examine the viability of three percent of Tasmania's GDP being guaranteed to the Aboriginal people either:

- i. Annually in perpetuity, or
- ii. Annually for a specified number of years.