



Central Australian  
**Aboriginal Congress**

ABORIGINAL CORPORATION | ICN 7823

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Submission in response to the  
***Northern Territory Treaty Commission  
Discussion Paper***  
October 2021

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***Aboriginal health  
in Aboriginal hands.***

## Recommendations

### Self-determination, treaties and health

- A. Congress asks that going forward the Northern Territory Treaty Commission explicitly considers the evidence regarding the potential for improved health for Aboriginal people in the Northern Territory that may flow from the successful negotiation of a Treaty through:
- increased control of Aboriginal people over their own lives; and
  - improved institutional arrangements for the provision of health and other services.

### Treaty background

- B. Congress supports:
- the objective of a Treaty to achieve substantive, long term, benefits for Aboriginal people, particularly in health outcomes, with progress to be measured through the *National Agreement on Closing the Gap* targets;
  - the foundational principles underlying this objective (ownership of the land, seas and waters; self-governance in accordance traditional laws and custom; and ongoing sovereignty), noting that Aboriginal First Nations continue to be the *current* owners of the land, seas and water, as ownership was never ceded and sovereignty never relinquished
  - the inclusion of truth-telling and a formal comprehensive apology for past wrongs as core parts of any treaty process
- C. Congress asks that going forward the Northern Territory Treaty Commission develops a deeper and more representative analysis of the effectiveness of community control in delivering better health services in the Northern Territory.

### Legal Issues

- D. Congress asks that the Northern Territory Treaty Commission ensures that the Treaty negotiation process addresses:
- the relationship between a Northern Territory Treaty and a national treaty as demanded by the *Uluru Statement from the Heart* to ensure that they align with each other;
  - the risk of future Commonwealth action that might undermine a Treaty, for example by seeking formal endorsement of a negotiated NT Treaty by the Commonwealth.

### Proposed framework and model for the Northern Territory

- E. Congress supports the right of each Aboriginal Nation to decide for itself where to sit on the four-phase continuum for the implementation of a Northern Territory Treaty; when and how to transition to each Phase; and what services or programs to include as part of the Treaty agreement.
- F. To support this process, an overarching Aboriginal governance structure should be established of suitable senior community and organisational representatives to oversee and review the process of Treaty-making across the Northern Territory.
- G. Congress calls on the Northern Territory Treaty Commission to ensure that the Treaty Implementation phase also allows for sector-level treaties for services or programs across the Northern Territory in a particular sector (e.g. health; education; or housing).

## Central Australian Aboriginal Congress

1. Central Australian Aboriginal Congress (Congress) is a large Aboriginal Community Controlled Health Service (ACCHS) based in Alice Springs. We are one of the most experienced organisations in the country in Aboriginal<sup>1</sup> health, a national leader in primary health care (PHC), and a strong advocate for the health of our people.
2. Congress delivers services to more than 17,000 Aboriginal people living in Alice Springs and remote communities across Central Australia including Ltyentye Apurte (Santa Teresa), Ntaria (Hermannsburg), Wallace Rockhole, Utju (Areyonga), Mutitjulu and Amoonguna.
3. Our response to the Northern Territory Treaty Commission's *Discussion Paper* is based on our long experience of advocating for self-determination and better health for Aboriginal people in Central Australia and beyond.

## Self-determination, treaties and health

4. Aboriginal people's health is central to who we are. Unlike Western medical models of health which focus on the absence of physical illness or disability in individuals, health for us is:

*Not just the physical well-being of the individual but the social, emotional and cultural wellbeing of the whole community. This is a whole-of-life view and it also includes the cyclical concept of life-death-life [1].*

5. Following from this definition, Congress is a strong advocate for the exercise of rights to self-determination and community-control of services as key determinants of health. These rights are recognised under international agreements, including:

- a. the *United Nations Declaration on the Rights of Indigenous Peoples* [2] as ratified by the Australian Government, which states:

*Article 23: Indigenous peoples ... have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions;*

- b. the *Indigenous and Tribal Peoples Convention, 1989* which contains a range of articles relating to the control of services by Indigenous peoples including:

*Article 25: Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.*

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<sup>1</sup> In this document we use the term 'Aboriginal' as the most appropriate terms in the Central Australian context to refer to Australia's First Peoples

6. Other developed countries with Indigenous peoples, such as New Zealand, the United States and Canada, have recognised treaties between their First Nations and their national governments. No such treaties have been negotiated in Australia.
7. A treaty or treaties can be expected to have positive health and wellbeing effects for Aboriginal peoples, as documented for those Indigenous peoples internationally where treaties have been negotiated and are the basis for policy making [3, 4]. These positive effects operate through two processes.
  - a. there is a strong relationship between disempowerment and poor health and wellbeing: there is now good evidence that the consistent exposure to stress associated with lack of ability to exercise control in life can profoundly undermine physical and mental health [5, 6]. The formal recognition that a treaty embodies – and the self-determinant policies and practices that flow from it – would increase Aboriginal people's control over their own lives and can be expected to lead to better health and wellbeing outcomes; and
  - b. treaties are able to provide enduring and effective institutional arrangements for the provision of health (and other) services, and contribute to overcoming the frequently adversarial nature of State and Territory government relations with Indigenous nations. This can be expected to contribute to a more effective, stable and sustainable policy and service delivery systems [7].

Congress asks that, going forward the Northern Territory Treaty Commission explicitly considers the evidence regarding the potential for improved health for Aboriginal people in the Northern Territory that may flow from the successful negotiation of a Treaty through:

- increased control of Aboriginal people over their own lives; and
- improved institutional arrangements for the provision of health and other services.

## A Treaty in the Northern Territory

8. The following provides a response to the specific sections of the Northern Territory Treaty Commission's *Discussion Paper*.

### Treaty background

9. Aboriginal Nations were sovereign prior to the colonial invasion. Aboriginal sovereignty was not ceded to the colonisers during or after invasion. We retain our sovereignty. Through the exercising of our cultural practices and through the establishment of our community-controlled organisations, such as Congress, we daily express this sovereignty and our right to self-determination.
10. We note and support the following elements of the Discussion Paper:
  - a. that the objective of a Treaty must be to achieve real change and substantive, long term, benefits for Aboriginal people (page 9). As an Aboriginal community-controlled health service, we particularly call for Treaty-making to make a real and appreciable difference to the health of our peoples, as measured through the *National Agreement on Closing the Gap* targets.

- b. that the treaty development process is based on three foundational propositions (page 9):
- that Aboriginal First Nations were the prior owners and occupiers of the land, seas and waters that are now called the Northern Territory. Note, however, that our position is not only that Aboriginal First Nations were the *prior* owners of the land, seas and waters but are also the *current* owners, as ownership was never ceded and sovereignty never relinquished;
  - that the First Nations of the Northern Territory were self-governing in accordance with their traditional laws and custom; and
  - that the First Nations peoples of the Northern Territory never ceded sovereignty of their land, seas and waters.
- c. that a process of truth-telling is at the core of any treaty negotiations (page 10); and
- d. that a treaty should include a formal comprehensive apology for past wrongs (page 43).
11. We also strongly support the argument that better outcomes occur where there is Aboriginal decision making and control. Congress has argued this vigorously for many years, with an increasing formal evidence-base supporting our position – see attached paper on *The effectiveness of primary health care delivered through Aboriginal Community Controlled Health Services*. The transition of government-run services to Aboriginal community-control should therefore be a key goal under Treaty-making.
12. Given this, we believe the examples given for community controlled health services in the Discussion Paper (pages 32-33) don't give a representative picture of our sector in the Northern Territory. Both The Purple House and the Institute for Urban Indigenous Health (IUIH) do excellent work: however, while IUIH runs some limited programs in the Northern Territory, it is based in Brisbane, and The Purple House has a strong focus on a single condition (kidney disease).

Congress supports:

- the objectives of a Treaty to achieve substantive, long term, benefits for Aboriginal people, particularly in health outcomes, with progress to be measured through the *National Agreement on Closing the Gap* targets
- the foundational principles underlying this objective (ownership of the land, seas and waters; self-governance in accordance traditional laws and custom; and ongoing sovereignty)
- the inclusion of truth-telling and a formal comprehensive apology for past wrongs as core parts of any treaty process

Congress asks that, going forward the Northern Territory Treaty Commission develops a deeper and more representative analysis of the effectiveness of community control in delivering better health services in the Northern Territory.

## Legal Issues

13. The Decision Paper does not canvas the relationship between a potential Northern Territory Treaty and the national process for treaty-making demanded through the *Uluru Statement from the Heart*.
14. Congress strongly supports the *Uluru Statement from the Heart* and its recommendations regarding the establishment of a constitutionally enshrined 'Voice to Parliament' alongside a Makarrata Commission to supervise a process of agreement-making and truth-telling. In our view, the Uluru Statement from the Heart has the strong support of the Aboriginal communities that we serve. We would like the Northern Territory Treaty Commission to ensure that the process for negotiating a Northern Territory Treaty is aligned with national treaty-making processes and constitutional reform.
15. We note from the Discussion Paper that due to the Northern Territory's status as a Territory, not a State:
  - a. a treaty will have no legal effect if it is inconsistent with the *Northern Territory (Self Government) Act 1978*, or if it is inconsistent with other Commonwealth legislation; and
  - b. the Commonwealth has the legal power to cancel any treaty enacted by the Northern Territory.
16. For these reasons, we ask that the Treaty process explicitly include a process to manage the risk of future Commonwealth action that might undermine a Treaty, for example by seeking formal endorsement of a negotiated NT Treaty at a Commonwealth level.

Congress asks that the Northern Territory Treaty Commission ensures that the Treaty negotiation process addresses:

- the relationship between a Northern Territory Treaty and a national treaty as demanded by the *Uluru Statement from the Heart* to ensure that they align with each other;
- the risk of future Commonwealth action that might undermine a Treaty, for example by seeking formal endorsement of a negotiated NT Treaty by the Commonwealth.

## Proposed framework and model for the Northern Territory

17. The Discussion Paper suggests four possible 'implementation points' for Stage 6 of the proposed negotiation process (Implementation of the Treaty) ...
 

*... with each successive phase representing a more advanced level of self-determination will be available and can be selected by the first Nation. However, there will be no compulsion for the First Nation to progress either to the end phase or any other phase (page 73).*
18. We understand that the four phases are as follows.
  - a. *Phase 1: Local Decision Making Agreement with the First Nation.* As per the Northern Territory Government's Local Decision Making process, which has an

aim of "Government and Aboriginal community partnerships in the transition of services and programs to community control".

- b. *Phase 2: First Nation Based Local Government.* The First Nation will assume all local government responsibility for their nation's land holding area as well as having the choice to continue all LDM agreements in place.
- c. *Phase 3: Regional Authority.* In addition to the First Nation assuming all local government responsibilities, under a Regional Authority the First Nation also delivers all key Northern Territory government services on its country.
- d. *Phase 4: Full First Nation Self Government.* This option provides full self-government including law making and tax raising powers and service delivery arrangements.

### **Aboriginal governance of the Treaty-making process**

19. It is entirely appropriate for each Aboriginal Nation to decide for itself where to sit on this continuum; when and how to transition to each Phase; and what services or programs to include as part of the Treaty agreement. The process for consultation and informed decision making, and for transition arrangements are likely to be complex and time-consuming, and must be adequately resourced by government.
20. In order to reduce the potential for conflict and inconsistency as individual Aboriginal Nations enter into Treaty processes, and to share information about the successes and challenges of the process, an overarching Aboriginal governance structure should be established of suitable senior community and organisational representatives to oversee and review the process of Treaty-making.

### **Territory-wide, sector-level Treaties**

21. In addition, it is important that the Treaty Implementation phase also allows for *sector-level treaties* that allow Treaty agreements about services or programs in a particular sector (e.g. health; education; or housing) across the whole of the Northern Territory. Something similar to this is already in place with the *Framework Agreement on Aboriginal Health*, which has been the foundation for significant progress in health service resourcing, and transition to community control over more than twenty years.
22. The signing of the *Framework Agreement* in 1997 established the Northern Territory Aboriginal Health Forum (NTAHF) which brings together senior representation from the Australian and Northern Territory Governments with the community controlled sector (AMSANT) to work collaboratively to:
  - a. ensure appropriate resource allocation;
  - b. maximise Aboriginal community participation and control as a key element of sustainable, viable, effective and efficient health services;
  - c. encourage better service responsiveness to / appropriateness for Aboriginal people;
  - d. promote quality, evidence-based care;
  - e. improve access for Aboriginal people to both mainstream and Aboriginal specific health services; and
  - f. increase engagement of health services with Aboriginal communities and organizations.

23. The NTAHF has also helped to ensure that the social determinants of health are addressed through high level collaboration and advocacy outside the health system.
24. Progress through the NTAHF has had to overcome many systemic barriers. A study of reforms to transfer control of primary health care for Aboriginal and Torres Strait Islander communities in the Northern Territory and Queensland, including the NTAHF as a case study, found that particular attention needed to be given to three key areas to make progress [8]:
- a. *Authorisation, auspice and control*: high-level commitments to transfer of control must be matched with secure structures and processes for sharing power and to manage the process;
  - b. *Resources*: investment of sufficient money, time and institutional capacity is needed; and
  - c. *Working in partnership across cultures*: government and community partners need to establish robust, effective and trusting relationships which takes time, resources and commitment to realise.
25. Despite the barriers, the NTAHF, guided by key documents such as the *Pathways to Community Control* [9] has persisted with the aims of improved health services for Aboriginal communities. Over time this has led to a significant extension of Aboriginal community control of health services, including amongst other places in East Arnhem (Miwatj Health); West Arnhem (Mala'la Health Service, Red Lily Health Board); and Central Australia (Congress).
26. Similar partnership structures could be established under Treaty, in key areas such as health, education and housing. These would need to be resourced and should be aligned with the *National Agreement on Closing the Gap* [10] which has been agreed by the Northern Territory Government and includes commitments to:
- a. shared decision-making and building the community-controlled sector (clause 17);
  - b. establishing formal partnership arrangements to support Closing the Gap between Aboriginal and Torres Strait Islander people and governments in each state and territory (clause 81);
  - c. respecting and adding to existing partnership arrangements such as the NTAHF rather than seeking to replace them (clause 34).

Congress supports the right of each Aboriginal Nation to decide for itself where to sit on the four-phase continuum for the implementation of a Northern Territory Treaty; when and how to transition to each Phase; and what services or programs to include as part of the Treaty agreement.

To support this process, an overarching Aboriginal governance structure should be established of suitable senior community and organisational representatives to oversee and review the process of Treaty-making across the Northern Territory.

Congress calls on the Northern Territory Treaty Commission to ensure that the Treaty Implementation phase also allows for sector-level treaties for services or programs across the Northern Territory in a particular sector (e.g. health; education; or housing).



## References

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