

# **Explanatory Statement**

## **Treaty Commissioner Bill 2020**

**Serial No.....**

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

MINISTER FOR TREATY

### **EXPLANATORY STATEMENT**

#### **GENERAL OUTLINE**

As outlined succinctly at clause 4, the purpose of this Bill is to implement the contents of the “Barunga Agreement”, a Memorandum of Understanding between the four Northern Territory Land Councils (Northern Land Council, Central Land Council, Tiwi Land Council and Anindilyakwa Land Council and the Northern Territory Government, signed at the Barunga Festival in June 2018 by the four Land Council Chairs and the Chief Minister.

Perhaps the key component of the Barunga Agreement requiring immediate implementation is the appointment of the Northern Territory Treaty Commissioner.

Please note that all references to the Treaty Commissioner are in the masculine as the current Treaty Commissioner is male.

#### **NOTES ON CLAUSES**

##### **Part 1 Preliminary matters**

##### **Clause 1 Short title**

This is a formal clause which provides the citation for the Bill. When passed, the Bill will be cited as the *Treaty Commissioner Act 2020*.

##### **Clause 2 Commencement**

This section sets out how the Act will commence. In this case, the Act will commence on the day after the Administrator’s assent is declared.

##### **Clause 3 Definitions**

This clause contains the definitions for key terms used in the Act: Acting Treaty Commissioner; Office of the Treaty Commissioner; Territory Aboriginal Land Council; Treaty Commissioner; and Treaty Commissioner’s staff.

## **Clause 4 The purpose**

As noted in the General Outline above, the purpose of the Act is to implement the Barunga Agreement. One of the key components requiring implementation is the conversion of the Treaty Commissioner's existing consultancy appointment to a statutory appointment.

## **Part 2 Office of the Treaty Commissioner**

### **Clause 5 Establishment of Office of the Treaty Commissioner**

This clause creates an Office of the Treaty Commissioner and allows it to be known as the Northern Territory Treaty Commission. It was originally intended to establish the Commission as an agency. However, given the limited tenure of the Commission and its limited budget, it was decided that the costs of this approach outweighed the benefits of that option.

### **Clause 6 Impartiality and independence**

The Treaty Commissioner's impartiality and independence from Government will be key to the success of the role. This clause details how that impartiality and independence will be achieved. Importantly, the clause makes it clear the Treaty Commissioner is not subject to direction of any person and that his/her staff can only be directed by the Treaty Commissioner or another member of the Treaty Commissioner's staff acting with the Treaty Commissioner's authority.

### **Clause 7 Appointment of Treaty Commissioner**

It is important to note that following his engagement as a consultant pending this Bill, Professor Dodson is actually appointed under the transition provisions at clause 23. This clause provides the process for appointing a subsequent Commissioner in the event that Professor Dodson vacates the office and requires the appointee to be an Aboriginal person who meets the eligibility criteria outlined in the next clause and who has been endorsed by the Chairperson of the four Territory Aboriginal Land Councils.

### **Clause 8 Eligibility for appointment**

This clause details the bases of eligibility and importantly, the bases of ineligibility, for the Treaty Commissioner's role. These bases are consistent with other recent and similar appointments that have been made since the introduction of the *Independent Commissioner Against Corruption Act 2017*.

### **Clause 9 Term of appointment**

This clause details the terms of appointment of three (3) years and provides for the possibility of reappointment at the expiry of that term. In Professor Dodson's case, his time as a consultant counts towards his three year term.

## **Clause 10 Conditions of appointment**

This clause clarifies the conditions of the Treaty Commissioner's appointment. Importantly, this clause makes it clear that the conditions of appointment cannot compromise the Treaty Commissioner's independence.

## **Clause 11 Functions and powers**

This clause details the Commissioner's functions and powers. These have been lifted directly from the Barunga Agreement.

## **Clause 12 Reporting**

This clause details the Treaty Commissioner's reporting requirements and require an interim report and Discussion Paper followed by a final report. The clause also requires tabling and public release of these reports. The clause allows for the possibility of an extension of time, however extensions must be endorsed by the Chairperson of each of the four Territory Aboriginal Land Councils.

## **Part 3 Administrative matters**

### **Clause 13 Vacancy in office**

This clause lists circumstances upon which the Treaty Commissioner's role may be vacated. Clauses 14 and 15 to follow provide details in relation to those circumstances.

Subsection 2 provides that the role may not be vacant for more than six months. This aligns with clause 17, where an Acting Treaty Commissioner can only be appointed for a maximum of six months in any 12 month period.

### **Clause 14 Resignation**

This clause allows the Treaty Commissioner to resign in writing.

### **Clause 15 Suspension and termination of appointment**

This clause goes into detail about the circumstances in which the Treaty Commissioner can be suspended or terminated and the processes to be followed if this is to be enacted. The circumstances primarily relate to either incapacity or a determination that the Treaty Commissioner has engaged in corrupt conduct.

### **Clause 16 Leave of absence**

This clause allows the Minister to grant the Treaty Commissioner a leave of absence at his or her discretion.

## **Clause 17 Acting Treaty Commissioner**

This clause provides for the appointment of an Acting Treaty Commissioner and details the process to be followed should this appointment be required. The circumstances generally relate to prolonged periods of absence. The appointment must be endorsed by the Chairperson of each of the four Territory Aboriginal Land Councils

## **Clause 18 Treaty Commissioner's staff**

This clause details the make-up of the Treaty Commissioner's staff, which, importantly, includes a Deputy Treaty Commissioner and also provides direction to ensure that those staff assist the Treaty Commissioner to perform his functions and exercise his powers.

It should be noted that similarly to the Commissioner, the current Deputy Commissioner (Ms Ursula Raymond) was engaged as a consultant following a formal procurement process and pending this legislation. It is the Commissioner's intention to formally appoint Ms Raymond as the Deputy Commissioner once this legislation is passed.

The Chairpersons of the four Territory Aboriginal Land Councils have already endorsed Ms Raymond's appointment. The requirements of subsection 3 relate to the appointment of a subsequent Deputy Commissioner should Ms Raymond vacate the office.

## **Clause 19 Oath before taking office**

This clause requires the Commissioner and, if appointed, an Acting Commissioner, to take an oath or make affirmation before performing any functions as Treaty Commissioner.

## **Clause 20 Confidentiality of information**

This clause imposes a burden of confidentiality and non-disclosure on the Treaty Commissioner's staff. The inclusion of offence provisions was considered, but was not pursued due to the nature of the role and its functions.

## **Clause 21 Protection from liability**

This clause details the circumstances where the Treaty Commissioner is legally indemnified. Essentially those circumstances are where the Treaty Commissioner follows the Act and where he is acting in good faith.

## **Part 4 Transitional and savings matters**

### **Clause 22 Definition**

This clause defines "commencement" for the purposes of this clause as being the same definition as that used in section 2; which is the day after the day on which the Administrator's assent to this Act is declared.

### **Clause 23 Prior Treaty Commissioner**

This is an important clause that transitions the existing Treaty Commissioner, Professor Michael Dodson AM, into this statutory appointment, noting that the three year appointment is backdated to 3 March 2019; giving an end date of 3 March 2022. Any subsequent Commissioners will be appointed under clause 7.

Subsection 2 ensures that Professor Dodson maintains the same remuneration conditions that he currently receives once his appointment transitions to a statutory one.

### **Clause 24 Validation**

This is another transitional clause that deems acts performed by Professor Dodson as Treaty Commissioner prior to the Act's commencement to have been performed under the auspices of this Act.

This clause also clarifies that the interim report referred to in clause 12 incorporates any interim report that the Commissioner gives to the Minister prior to the commencement of this legislation.

### **Appendix Barunga Memorandum of Understanding**

The Barunga Agreement has been included as an appendix to this Act in order to ensure that the integrity of clause 4 and transparency are maintained.