

Report from the  
Treaty Working Group  
on Queensland's

# **PATH TO TREATY**

February 2020

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# EXECUTIVE SUMMARY AND RECOMMENDATIONS

## *Always was, always will be...*

*First Nations (Aboriginal and Torres Strait Islander) peoples have never ceded sovereignty, have always asserted that their sovereignty continues to exist, and that properly negotiated treaties are needed to give recognition to their continuing sovereignty.*

The Path to Treaty process has created an historic opportunity for Aboriginal and Torres Strait Islander and non-Indigenous Queenslanders to consider what a treaty or treaties might mean for this state.

The Treaty Working Group was tasked with providing a report to the Queensland Government outlining levels of support and next steps for a treaty process as outlined by the community engagement process. This executive summary therefore sets out the Treaty Working Group's conclusions and recommendations based on what they heard from Queenslanders, including the broad structure of the report.

## Introduction and history

Unsurprisingly, community sentiments toward treaty were deeply tied to the history of Queensland and the treatment and experiences of the First Nations peoples in this state.

The Treaty Working Group's engagement with the community revealed a limited understanding amongst non-Indigenous Queenslanders about the history of their state and a deep desire for awareness about the historical treatment and experiences of First Nations peoples to be strengthened.

As a result, it was determined that this history must be at the forefront of any treaty process, including setting the scene for this report and the community feedback and recommendations which follow.

The history chapter broadly outlines the laws and policies that were directed at First Nations peoples since early settlement, details of which are further echoed in the community engagement section that is found in Chapter 1 of this report.

It is the particular historical experiences of First Nations peoples in Queensland, which prompted calls from the community to specifically incorporate truth-telling as a core component of any treaty process moving forward.

The Treaty Working Group is of the view that truth-telling is an important precursor to the treaty process and will have significant positive implications for the relationship between First Nations peoples and non-Indigenous Queenslanders for generations to come.

## Treaties and agreement making

Chapter 2 traces comparative national and international treaty making and agreement processes that are specific to First Nations peoples. Brief consideration is given to contexts such as New Zealand and Canada regarding the ongoing relevance of treaty making to good governance, law and relationships with First Nation's peoples. This is followed by an exploration of the various models of agreement making currently being pursued at the state level in Australia, including the *Buthera Agreement* in South Australia, the *Barunga Agreement* in the Northern Territory and the *Noongar Agreement* in Western Australia, which some legal experts have labelled as Australia's first domestic treaty.

Indigenous Land Use Agreements are also examined, as are the historic yet little known treaties involving First Nations peoples, such as the *Batman Treaty* and the *Torres Strait Treaty*.

Crucially, this chapter also explores the proposed benefits of a treaty, including what this would mean for reconciliation amongst First Nations peoples and non-Indigenous Queenslanders, and addresses questions around sovereignty, unfinished business and historical trauma.

Collectively, this chapter provides a strong backdrop for the emergence of a treaty process that is both unique to the history and wishes of all peoples in Queensland.

## Community engagement process and findings

Chapters 3 and 4 outline the Path to Treaty process, including the methodology for the state-wide engagement process undertaken by the Treaty Working Group which followed the release of the community consultation paper by the Queensland Government on the 13 September 2019.

The Treaty Working Group had wide-ranging discussions with over a thousand First Nations and non-Indigenous Queenslanders throughout the engagement process which included 24 community forums and took place from October to December 2019. Public submissions and the online surveys were also completed during this time.



Feedback received from the community is organised according to the five key questions that were asked throughout the engagement process and is reflected in the words of participants.

A number of key themes emerged throughout engagement process, including:

- There is broad support for a treaty process, including state-based and/or local treaties
- First Nations' sovereignty was never ceded and continues to be asserted
- Treaties must be legally binding, human rights based and acknowledge the sovereignty of First Nation's peoples
- Truth-telling is a necessary precursor to treaty
- Determining representation for a treaty or treaties is a key issue that needs to be addressed
- There is a need for a broad awareness campaign to build public knowledge and support for treaty
- There is need for community jurisdiction and control over decision-making to substantively influence and tailor local services, as well as address perceived service deficiencies.

Broadly speaking, this chapter reflects the desire amongst Queenslanders for a treaty process that is unique to the context of their state that engages all people, that is based on truth and that continues to build public support and momentum.

## Conclusions

The Treaty Working Group has concluded that there is broad support within the Queensland community for a treaty process to begin. The recent introduction of the Queensland *Human Rights Act 2019*, the *Queensland Stolen Wages Reparations Task Force Report: Reconciling Past Injustice* (2016) and national and state based conversations around treaty and truth-telling, all provide fertile ground for the progression of this issue in a manner that honours the experiences and voices of Queenslanders.

Chapter 5 therefore outlines a number of proposals with which to progress Queenslanders aspiration for treaty, including truth-telling models, building public support, and the establishment of mechanisms to maintain momentum and provide oversight to a treaty making process. This also includes discussion about how to resource a treaty process moving forward, on the understanding that such a commitment will be longstanding, not overnight, and that much work remains to be done to prepare the groundwork for treaty.

Consideration is given to a number of complex issues that arose throughout the engagement process, such as the need to accommodate those who had been displaced and are now living off Country, the status of Traditional Owner groups in treaty processes, broader questions around representation and the issue of an overarching state based treaty as well as local treaties.

The Treaty Working Group acknowledges the varied and complicated nature of treaty and truth-telling and does not attempt to resolve all of these within the body of this report. Rather, the Treaty Working Group identifies that through the establishment of a number of mechanisms and with more time, these issues will be able to be worked through, in concert with First Nations in Queensland.

## Recommendations

Chapter 6 sets out the recommendations of the Treaty Working Group, which were made in accordance with feedback received throughout the community engagement process and the requirement to report to the Eminent Panel, on what a treaty might mean for Queensland including timing, process, and next steps.

The Treaty Working Group make eight recommendations which are outlined below.

### 1. Path to Treaty: Overview

That the Queensland Government proceed on a Path to Treaty with the ultimate aim of reaching a treaty or treaties with the First Nations of Queensland.

That the Path to Treaty be conducted using a rights based approach consistent with both the *Human Rights Act 2019* (Qld) and the *United Nations Declaration on the Rights of Indigenous Peoples*.

That, in order to progress the Path to Treaty the Queensland Government make a Treaty Statement of Commitment to express the Government's intention to further lasting reconciliation with First Nations through the actions detailed in the recommendations below involving:

- the establishment of the First Nations Treaty Institute as an independent body to lead the Path to Treaty process
- the facilitation of a process of truth-telling and healing
- the building of capacity for First Nations to actively participate in the treaty process
- deepening the understanding and engagement of the wider Queensland community in the Path to Treaty
- the adequate resourcing of these actions through the establishment of a First Nations Treaty Future Fund
- the placing before Parliament in the first half of 2020 a Bill to further the Path to Treaty, establish the First Nations Treaty Institute and the First Nations Treaty Future Fund.

## 2. The First Nations Treaty Institute

That principal carriage of the actions required to progress the Path to Treaty be the responsibility of a statutory entity established by an Act of the Queensland Parliament called the First Nations Treaty Institute (Institute).

That the functions of the First Nations Treaty Institute include:

- advising and facilitating the development of a treaty making framework
- advising on possible representative mechanisms and structures for First Nations peoples
- leading a process of truth-telling and healing
- providing support to build the capacity of First Nations to engage in the treaty making process
- supporting the development of governance models suitable for First Nations
- engagement with the Queensland community on the Path to Treaty.

That the governance of the Institute be the responsibility of an Institute Council comprising:

- of members initially appointed by the Governor in Council and then subsequently
- of members directly appointed by First Nations representative mechanisms and structures and;
- a Chief Executive Officer appointed by the Institute Council.

That the Institute recommend to the Queensland Government the representative mechanisms and structures for First Nations provided the recommendation:

- has been informed through extensive consultation with First Nations peoples
- represents an agreed position of First Nations.

That the First Nations Treaty Institute operate independently of the Queensland Government with reporting to be to the Queensland Parliament.

That funding for the First Nations Treaty Institute be drawn from the First Nations Treaty Future Fund.

## 3. Truth-telling and Healing

That the Queensland Government facilitate and resource a comprehensive process of Truth-telling to chronicle the history of First Nations peoples prior to British colonisation of Queensland, the history and impact of colonisation on First Nations peoples and the more recent history of Queensland in relation to First Nations peoples.

That, as its first priority, the First Nations Treaty Institute be commissioned and empowered (e.g. the ability to compel the production of documents and witnesses) to conduct the process of Truth-telling and to support participants and witnesses involved in the process.

That healing and reconciliation be supported through the process with relevant service providers auspiced to provide support to First Nations People to recover from their lived experience and impacts of intergenerational trauma.

That the resources, materials and testimony gained from the process be used:

- to inform popular and academic understanding of First Nations and the history of colonisation
- as source material for the development of mandatory educational curricula.

## 4. Capacity Building

That First Nation Peoples be supported to engage in the Path to Treaty with the aim that future discussions and negotiations on a possible treaty or treaties might occur with the State on an equitable basis.

That the First Nations Treaty Institute develop and administer programs to assist First Nations and their communities to become treaty-ready and support First Nations to develop governance models appropriate for different communities.

That partnerships with Universities and other bodies be fostered through the First Nations Treaty Institute to build resources and expertise available to be called upon by First Nations in strengthening their capacity for treaty discussions and on-going governance.

That the Premier supported by the Minister for Aboriginal and Torres Strait Islander Partnerships coordinate preparations within government for the Path to Treaty process.

## 5. Community Understanding and Engagement

That the Queensland Government undertake in conjunction with the establishment of the First Nations Treaty Institute and in advance of the Truth and Healing process, a community engagement program to promote understanding of the history of First Nations peoples and the Path to Treaty process.

## 6. Implementation: The Path to Treaty Act

That the Queensland Government place before Parliament in the first half of 2020 a Bill to further the Path to Treaty, establish the First Nations Treaty Institute and the First Nations Treaty Future Fund.

The proposed legislation will include acknowledgment that:

- First Nations successfully governed their lands, seas, waters and air and associated resources for at least 65,000 years prior to British colonisation of Queensland
- colonisation occurred without the consent of First Nations and often against the active resistance of First Nations peoples
- First Nations have never ceded their sovereignty and continue to assert sovereignty
- colonisation occasioned devastating disruption to First Nations societies and the wholesale dispossession of First Nation peoples of their lands, seas, waters and air
- First Nations' responsibilities for their lands, seas, waters and air continue in accordance with traditional laws and customs
- First Nations cultures and knowledge is an enormous resource for Queensland
- Queensland seeks to embark on a Path to Treaty in partnership and good faith and consistently, with the recognition of the rights of First Nations peoples as embodied in the *Human Rights Act 2019* (Qld) and the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration).

The proposed legislation will:

- establish the First Nations Treaty Institute
- establish the First Nations Future Fund
- enable future representative mechanisms and structures to be recognised as participants in the settlement of a treaty framework and as parties to treaties
- support the development of appropriate governance arrangements for representative mechanisms and structures for First Nations individually and collectively as required
- provide for the Path to Treaty to proceed based on the Declaration (i.e. incorporate into the Act specifics such as self-determination and free prior and informed consent, fairness and equality, good faith negotiations, mutual benefit and sustainability, transparency and accountability)
- enable the future creation of a Treaty Tribunal to oversee the treaty making process, monitor compliance, arbitrate and resolve disputes and review treaties over time
- enable the future adoption of the Treaty Framework as facilitated by the First Nations Treaty Institute and accepted by the Queensland Government and First Nations representative mechanisms and structures
- dispute resolution provisions
- reporting and other necessary legislative requirements.

## 7. Implementation: Resourcing and creation of the First Nations Treaty Future Fund

That the Queensland Government provide a sustainable and guaranteed financial basis for the Path to Treaty process to proceed.

That a First Nations Treaty Future Fund (Fund) be established into which will be credited annual appropriations for a minimum of 10 years commencing with the Queensland Budget for the 2020–2021 financial year sufficient to be applied to the following:

- the operational costs of the First Nations Treaty Institute
- capacity building for First Nations
- support for the Truth and Healing process and programs
- support for representative mechanisms and structures
- the costs of First Nations peoples involvement in treaty negotiations
- an annual allocation for capital investment sufficient for the Fund to become self-sustaining over time.

That the administration of the Fund be placed with First Nations Treaty Institute with investment of the Funds to be undertaken by the Queensland Investment Corporation informed by ethical considerations provided by the First Nations Treaty Institute.

## 8. Transparency

That the Report of the Treaty Working Group and the advice to Queensland Government of the Eminent Panel be published and made freely available to the public.

# MESSAGE FROM THE TREATY WORKING GROUP

The Treaty Working Group acknowledges Aboriginal and Torres Strait Islander peoples, the original custodians of the land, sea, air and waters upon which the State of Queensland rests. We honour the First Nations peoples of Queensland as well as the unique place they have in the state's identity. In doing so we acknowledge their sovereignty, which was never ceded, and their ongoing connection to Country.

The Treaty Working Group acknowledges the people who took part in the conversations held around the state, and thanks them for the energy and frankness that they brought to the engagement process.

The Treaty Working Group acknowledges the people who have provided their expertise to assist us in the development of this report, in particular Mr Anthony McAvoy SC, Emeritus Professor Kay Saunders AM, Mrs Kirsten Gray, Dr Valerie Cooms and Mr Les Malezer.

The Treaty Working Group salutes the efforts of countless Aboriginal and Torres Strait Islander peoples throughout generations, and the non-Indigenous people who have walked with them in striving for a treaty. The Treaty Working Group firmly believes in the wide-reaching benefits that treaty will bring to the lives of all who reside in Queensland, now and into the future.

## MEET THE TREATY WORKING GROUP AND EMINENT PANEL



**Dr Jackie Huggins AM (Eminent Panel Co-Chair and Treaty Working Group Co-Chair)**

Jackie is a Bidjara/Birri Gubba Juru woman from central and north Queensland.

She was born in Ayr and grew up in Inala in Brisbane.

Jackie has first-hand, lived experience on the issues that affect the lives of Aboriginal and Torres Strait Islander Queenslanders. She has devoted her life to Aboriginal and Torres Strait Islander issues and the pursuit of a better life for her people.

Throughout her career Jackie has been involved in reconciliation, the Stolen Generations, education, arts, leadership, prison reform, domestic and family violence, health, housing, literacy, disability, human rights, women's issues and other social justice initiatives.

Jackie is a former Co-Chair of Reconciliation Australia, Council for Aboriginal Reconciliation and the former Co-Chair of the National Congress of Australia's First Peoples. She has also served as the Chair of the Queensland Domestic Violence Council, the State Library Board of Queensland, Commissioner for Queensland for the *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*.



**Emeritus Professor The Hon Michael Lavarch AO (Eminent Panel Co-Chair)**

Michael is a proud Queensland, who has spent his life serving his community.

He completed his Law degree in 1984, before being elected to the House of Representatives as the member for Fisher in 1987, and for Dickson in 1993.

In his role as the Attorney-General in the Keating Government from 1993 to 1996 he worked to establish the National Native Title Tribunal and conducted negotiations with State and Territory governments for the implementation of the Native Title Act. He also initiated a wide range of law reform, including the *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*.

Michael has maintained strong links to the legal profession and is an Emeritus Professor of Law at the Queensland University of Technology. He has served as a board member in the finance, energy, and not-for-profit sectors and has conducted numerous reviews for government.



**Mick Gooda (Eminent Panel Member and Treaty Working Group Co-Chair)**

Mick's people are the Ghungalu from the Dawson Valley in Central Queensland. He has spent the last 30 years advocating for the rights of Aboriginal and Torres Strait Islander Australians.

He was appointed the Aboriginal and Torres Strait Islander Social Justice Commissioner in February 2010 and held that position until September 2016, when he was appointed Co-Commissioner on the Royal Commission into the Protection and Detention of Children in the Northern Territory.

Mick has undertaken work a wide range of roles such as the CEO of the Cooperative Research Centre for Aboriginal Health, Native Title Consultant with the Western Australian Aboriginal Legal Service, and the Aboriginal and Torres Strait Islander Commission, ATSIC.

Mick has chaired the Queensland Stolen Wages Reparation Taskforce, the National Centre of Indigenous Genomics and was a member of the Expert Panel, and the Referendum Council which were convened to advise the Federal Government on the Recognition of Aboriginal and Torres Strait Islander Peoples in the Australian constitution.

More recently, he has been appointed to the Queensland First Children and Families Board which is tasked with overseeing reforms to reduce the over-representation of Aboriginal and Torres Strait Islander children in the child protection system, and as First Nations Housing Advisor to the Queensland Government.



**Honourable Dame Quentin Bryce AD CVO (Eminent Panel)**

Dame Quentin was born in Brisbane and spent her early years in Ilfracombe in central western Queensland.

Dame Quentin is a passionate community and human rights advocate and has spent her life advocating for advancing human rights, particularly the rights of women, children, and First Nations Australians.

She has enjoyed a distinguished career and has held several esteemed positions including the being the Federal Discrimination Commission at the Human Rights and Equal Opportunity Commission, the Convenor at the National Women's Advisory Council, and the founding Chair and CEO of the National Childcare Accreditation Council.

Dame Quentin chaired the Special Taskforce on Domestic and Family Violence in Queensland to deliver the *Not Now, Not Ever: Putting an End to Domestic and Family Violence* in Queensland report in February 2015.



**Ms Josephine Bourne (Eminent Panel)**

Josephine is a mainland Torres Strait Islander, born in Townsville, North Queensland. She is a Gumulgal woman of Mabuig Island through her father's ancestral line with links to Moa Island. On her mother's line Josephine's ancestry links to Badu, Mer and Dawar Islands.

She has made significant contributions to her community in the areas of community capacity building through multimedia training and youth counselling and leadership development.

Josephine is a political studies scholar currently based at the Department of Indigenous Studies at Sydney's Macquarie University. Her research interests are multi-disciplinary and focus on governance, leadership and organisational development by Aboriginal and/or Torres Strait Islander peoples.

Previously Josephine was the national program manager for the Indigenous Youth Leadership Program at the Foundation for Young Australians. She was an inaugural board member of the National Congress of Australia's First Peoples and was appointed Co-Chair during its initial establishment phase. Later Josephine served as a member of the Congress' Ethics Council. Josephine was also a technical advisor, facilitator and convenor in the regional dialogues leading up to the Constitutional Convention that produced the *Uluru Statement from the Heart*.

Josephine is currently a member of the Social Justice Commissioner's Wiyi Yani U Thangani (Women's Voices) Advisory Committee with the Australian Human Rights Commission.



**Mr Dan Crowley  
(Eminent Panel)**

Dan is a former Rugby Union player, who played for Queensland for 14 years, represented Australia in three World Cup campaigns and was an integral member of two winning World Cup teams (1991 and 1999).

Dan has served on the boards of the Australian Rugby Union, Queensland Rugby Union, Queensland Rugby Union Club, and the Rugby Union Players Association.

He is also a former Detective Sergeant with the Queensland Police Service and the former president of Traffic Management Associations of Queensland and Australia, and the Australian Institute of Private Investigators.

He has written best-selling sports books about his time as undercover police officer and rugby player, and does motivational speaking as well as commentating for 4BC Radio and Fox Sport.

Dan is the founder and managing director of his own business—Verifact Pty Ltd—and is heavily involved in various charities.



**Mr Kerry O'Brien  
(Eminent Panel)**

Kerry is a prominent Australian journalist and author whose long career includes 28 years as a national current affairs television presenter and interviewer. He

has specialised in politics, but has also built a strong base in economics and business journalism, as well as investigative reporting. He has interviewed presidents and prime ministers across the world.

Kerry has worked for every free to air television network, but has spent more than 30 years in public broadcasting. He cut his teeth on trail-blazing ABC current affairs programs like This Day Tonight, and Four Corners, and was the first presenter of the ground-breaking late night news analysis program, Lateline. He was also Editor and Presenter of the National 7.30 Report for 15 years. For more than 20 years he was the face of the ABC's election night coverage.

Kerry has written two books including a memoir, and is on the speaker's circuit.



**Mr Kenny Bedford  
(Treaty Working Group)**

Kenny is a Traditional Owner of the Meuram tribe of Erub in the Torres Strait.

His primary totems are the Beuger and Omai—the booby bird and dog.

Kenny has served as the Deputy Mayor on the inaugural Torres Strait Island Regional Council and as the Member for Erub on the Board of the Torres Strait Regional Authority.

As the Portfolio Member for Fisheries on the Board, Kenny was involved in increasing Aboriginal and Torres Strait Islander ownership and recognising Aboriginal and Torres Strait Islander’s rights and management responsibilities for traditional and commercial fishing resources in the region.

Today, Kenny manages his own consultancy business, is a director with My Pathway, a board member of Reconciliation Australia, and volunteers on the National NAIDOC Committee.



**Mr Leon Filewood  
(Treaty Working Group)**

Leon was born and raised on Waiben (Thursday Island), Kaurareg Country, in the Torres Strait. He is a descendent of the Ugar Umlé, Moalgal/Italgal peoples in the Torres Strait. His Aboriginal heritage stems from the Yalanji, Koko Mini and Girimay people of Far North Queensland.

He is a writer, producer, director, motivational speaker and stand up comedian.

Leon has a Bachelor of Laws and a Graduate Diploma of Legal Practice from the Queensland University of Technology.

After working as a solicitor in private practice, Leon changed his career path and became in-house counsel and divisional manager at a local Aboriginal Land Council in Western Sydney, responsible for the health, housing, education and training portfolios.

Leon now lives in Brisbane where he continues to serve the Aboriginal and Torres Strait Islander community, as a community development coordinator, in local government.



**Ms Cheryl Buchanan  
(Treaty Working Group)**

Cheryl is a proud Guwamu woman from southwest Queensland. She is a renowned publisher, playwright, author, speaker, director, teacher, lecturer and traditional dancer.

Spanning more than five decades, Cheryl has played an integral role in driving social change for her people—both at state and national levels. To this day, she remains a vocal political activist and passionate advocate for Aboriginal and Torres Strait Islander peoples.

Cheryl played a vital role in forming the Brisbane Tribal Council and was a founding member of the Aboriginal Legal, Medical Services and Childcare Centre in Brisbane, Black Community School, Black Resource Centre, the Murrie Co-ee Publishing Company and the Aboriginal and Torres Strait Island Women’s Legal and Advocacy Service in Brisbane.

She was also a member of the 1972 Aboriginal Tent Embassy and the first Aboriginal delegation to travel to China.

Cheryl was the first Aboriginal Commissioner to be appointed with the Queensland Corrective Services Commission and was Chairperson at the Queensland Community Arts Network. Following the Royal Commission into Aboriginal Deaths in Custody, Cheryl held roles as Chair with the Queensland and National Aboriginal Justice Advisory Committees.

She was also the Deputy Chair of the First Peoples Water Engagement Council and the Indigenous Water Advisory Council under the National Water Commission. Following a successful Native Title application, Cheryl held roles of Chairperson and Director for the Prescribed Body Corporate.

As a founding member of the Northern Basin Aboriginal Nations, Cheryl is currently the Deputy Chair and is also a Director of Queensland Murray-Darling Catchments Limited.



**Ms Charmaine Foley  
(Treaty Working Group)**

Charmaine commenced her working life as a Registered Nurse and Midwife.

Charmaine’s involvement in unionism led her to a change of career to become an elected representative for the then Maroochy Shire Council. While living in Roma, Charmaine met Jackie Huggins and became involved in the Reconciliation Movement. Between 1993 and 2000, Charmaine served as the Queensland Coordinator for Australians for Reconciliation, where she conducted two large-scale community consultations and assisted with the establishment of more than 120 local reconciliation groups.

In 2000 Charmaine was involved with organising the Walk for Reconciliation across Sydney Harbour Bridge and was the coordinator of the Brisbane Bridge Walk for Reconciliation.

She has spent the past 20 years working in cultural heritage, native title and employment and currently is involved in a number of discrete projects working with Aboriginal people in Central Queensland. Charmaine is a former member of the ABC Advisory Council and a finalist in the Telstra Business Awards.



**Mr Shane Hoffman  
(Treaty Working Group)**

Shane is a proud descendant of the Yiman Peoples of Central Queensland.

He has worked for the betterment of First Nations Peoples most of his life, holding senior positions with a number of government departments and agencies including the Aboriginal and Torres Strait Islander Commission (ATSIC).

Shane headed up a secretariat to the Committee reviewing the Community Services legislation in Queensland and made representations to the United Nations Human Rights Committees regarding the Native Title Act Amendments following the High Court’s Wik Decision and about the lack of progress on recommendations of the Royal Commission into Aboriginal Deaths in Custody.

Shane previously led a small team to consult First Peoples about, and build momentum for, a Treaty between First Peoples and the Australian people. This momentum ceased with the abolition of ATSIC in 2004.



**Ms Elsie Seriat  
(Treaty Working Group)**

Elsie is a proud Torres Strait Island woman whose connection comes from Mabuig Island (Besi) Wagadagum tribe from Migi Buai in the western islands of the Torres Strait and a Kaurareg descent from Kaiwalagal inner islands of the Torres Straits.

She joined the Indigenous Marathon Project in 2014 and after conquering the New York Marathon she returned to Thursday Island inspired to promote healthy living in her community.

Elsie started the Deadly Runners group and soon many community members were regularly turning up to ‘pound the pavement’ and improve their fitness.

She is passionate about providing people with the tools to promote, change and celebrate Indigenous achievement through physical challenges.

In 2018, Elsie was honoured with an Order of Australia Medal for her contribution to her community of Thursday Island.

Following her time with the Indigenous Marathon Foundation in Canberra, Elsie has returned to her community on Thursday Island.



**Ms Sandi Taylor  
(Treaty Working Group)**

Sandi is a Kalkadoon/Kalkatungu, Ngawun and Yirandali woman from North-West Queensland.

Sandi is an experienced community development practitioner with a strong social justice ethos, demonstrated throughout a 30-year career working with communities to facilitate and support their aspirations and deliverables to meet their community needs.

She works from the premise of self-determination, community empowerment and leadership and is committed to a Rights based Agenda for First Nation’s people.

Sandi leads with the strong belief in the resilience of Aboriginal and Torres Strait Islander people’s cultural knowledge and wisdom to respond to their needs and issues in culturally valid and appropriate ways.



**Ms Kate Tully  
(Treaty Working Group)**

Kate is an experienced executive leader with significant experience in engagement and consultation. She has been the CEO of YWCA Queensland, an organisation working to improve the lives of those living with disadvantage, as well as Head of College at Duchesne College within the University of Queensland.

She has been engaged by Toowoomba Regional Council to conduct intensive community consultations, and by the University of Southern Queensland to research and investigate the markers of thriving communities.

Kate was Chair of QCOSS (Queensland Council of Social Service), the state’s peak body for organisations working to eliminate poverty and disadvantage, and is currently a member of the Queensland Plan Ambassadors Council and the Community Services Reform Council.

# GLOSSARY AND TERMINOLOGY

**Indigenous peoples** are described by the International Labour Organisation as the descendants of those peoples who inhabited the country or geographical region at the time of conquest, colonisation or establishment of present state boundaries.<sup>1</sup>

Spread across the world from the Arctic to the South Pacific, they are the descendants—according to a common definition—of those who inhabited a country or a geographical region at the time when people of different cultures or ethnic origins arrived. The new arrivals later became dominant through conquest, occupation, settlement or other means.<sup>2</sup>

Among the Indigenous peoples are those of the Americas (the Lakota in the USA, the Mayas in Guatemala or the Aymaras in Bolivia), the Inuit and Aleutians of the circumpolar region, the Saami of northern Europe, the **Aboriginal and Torres Strait Islanders of Australia** and the Maori of New Zealand. These and most other Indigenous peoples have retained distinct characteristics which are clearly different from those of other segments of the national populations.<sup>3</sup>

**People/Peoples** The term ‘people’ has a number of meanings:<sup>4</sup> firstly, it is the plural of person, i.e. there are three people waiting outside; secondly, it can mean all or most humans, e.g. people carry their mobile phones everywhere; thirdly, and most relevant to this report, it means a group of people who belong to the same culture, ethnicity, nation or race, i.e. the Inuit people developed a way of life suited to living in a very cold climate. Peoples is the plural of people when used in this context and refers to more than one group of people, i.e. the Inuit and Aleutian peoples inhabit the circumpolar region.

When we refer to Aboriginal and Torres Strait Islander peoples of Australia, we mean all of the different Indigenous nations, societies, language groups that live in Australia. It is estimated there are more than 200 such nations in Queensland.

Commonly referred to as **First Nations** or **First Peoples**, they are the different language groups which existed at the time of colonisation. Each nation had territories marked by clear boundaries, the resources within which provided for their continued existence. First Nations also traded with each other to supplement their own resources.

The terms First Nations and First Peoples are used because the Aboriginal and Torres Strait Islander peoples were the first peoples to inhabit Australia. In the case of Aboriginal peoples, they can claim ongoing occupation for at least 65,000 years.<sup>5</sup>

There are collective rights which pertain to peoples, such as the right to self-determination.

**Self-determination** refers to the right of all peoples to determine their own futures. By that right they can freely determine their political status and pursue their economic, social and cultural development. They have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights to participate fully, if they choose to, in the political, economic, social and cultural life of the state.<sup>6</sup>

## A note on terminology

The Treaty Working Group recognises the significant diversity of language, culture, ways of life and kinship of the First Nations peoples of Queensland. First Nations peoples retain their distinct cultural identities, regardless of whether they are living on or off Country and in urban, regional or remote areas of Queensland.

The word ‘peoples’ recognises that both Aboriginal people and Torres Strait Islander people have collective and individual dimensions to their lives, a fact that is affirmed by the United Nations Declaration on the Rights of Indigenous Peoples.

The Treaty Working Group recognises that there is strong support for the use of the terms ‘Aboriginal and Torres Strait Islander peoples’, ‘First Nations peoples’ and ‘First Peoples’. The term ‘First Nations peoples’ will be used throughout this report to refer to Aboriginal and Torres Strait Islander peoples.

Sources quoted in this report also use various terms including ‘Aboriginal and Torres Strait Islanders’, ‘Aboriginal and Torres Strait Islander people(s)’ and ‘Indigenous people(s)’. International documents in particular frequently use the term ‘indigenous peoples’, where ‘indigenous’ does not begin with a capital ‘i’, when referring to the Indigenous peoples of the world. To ensure consistency, these usages are preserved in quotations, extracts, and in the names of documents.

<sup>1</sup> International Labour Organisation (ILO) Convention 169, available online at [https://www.ilo.org/global/topics/indigenous-tribal/WCMS\\_503321/lang--en/index.htm](https://www.ilo.org/global/topics/indigenous-tribal/WCMS_503321/lang--en/index.htm), (accessed 14 January 2020).

<sup>2</sup> United Nations Permanent Forum on Indigenous Issues (UN PFII) Fact Sheet: Who are indigenous peoples? Online at: [https://www.un.org/esa/socdev/unpfii/documents/5session\\_factsheet1.pdf](https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf) (accessed 14 January 2020).

<sup>3</sup> United Nations Permanent Forum on Indigenous Issues (UN PFII) Fact Sheet: Who are indigenous peoples? Online at: [https://www.un.org/esa/socdev/unpfii/documents/5session\\_factsheet1.pdf](https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf) (accessed 14 January 2020).

<sup>4</sup> Merriam Webster, available online at: <https://learnersdictionary.com/qa/What-is-the-difference-between-people-and-peoples->, (accessed 14 January 2020).

<sup>5</sup> C Clarkson, Z Jacobs, Z., B Marwick, et al. (2017) Human occupation of northern Australia by 65,000 years ago. *Nature*, vol. 547, 306–310

<sup>6</sup> United Nations Permanent Forum on Indigenous Issues (UNPFII), Frequently Asked Questions, Declaration on the Rights of Indigenous Peoples, available online at: [https://www.un.org/esa/socdev/unpfii/documents/faq\\_drips\\_en.pdf](https://www.un.org/esa/socdev/unpfii/documents/faq_drips_en.pdf) (accessed 16 January 2020).

# INTRODUCTION

## ***Starting on the path to treaty—the conversations begin ...***

*On 14 July 2019, the Queensland Government announced a commitment to commence discussions on a Path to Treaty, an initiative it said was intended to reframe the relationship between First Nations peoples and the Queensland Government.*

Treaties have been used throughout the world to define relations between Indigenous peoples and those who have colonised their lands. Whilst First Nations peoples have long advocated for the need for a treaty with the Australian Government, no such agreement has been forthcoming.

The promise of treaty at the national level, such as the Hawke Government's response to the 1988 *Barunga Statement*, has gone unrealised.

Unlike other countries, Australia has not entered into a treaty or treaties with its Indigenous peoples. Canada, New Zealand and the United States of America have done so, and in some instances, are still negotiating such agreements to the present day. Despite the lack of movement at the national level, a number of states and territories have recently begun their own paths towards treaty. Developments such as the 2018 *Barunga Agreement* in the Northern Territory, the appointment of a Treaty Commissioner in South Australia and the 2019 election of the First Peoples Assembly in Victoria are examples of this. Some constitutional lawyers have suggested that the 2016 Noongar settlement in Western Australia constitutes Australia's first 'domestic treaty'.<sup>7</sup>

These developments, alongside the *Uluru Statement from the Heart* (the Uluru Statement), provide fertile ground for the Queensland treaty process.

Whilst the Queensland Government formally announced its commitment to treaty to mark the end of NAIDOC week in 2019, treaty has been part of its policy agenda since 2016.<sup>8</sup> Heralded as an opportunity to reframe the relationship with First Nations peoples in Queensland, government has stated that the treaty process is a significant milestone, which aims to support self-determination, local decision making, truth-telling and improved life outcomes.

Unlike other treaty processes currently underway around Australia, Queensland's Path to Treaty provides a 'once in a generation' opportunity for all peoples in Queensland—First Nations and non-Indigenous peoples alike—to share what such a process might mean for them.

This report sets out the key findings from conversations the Treaty Working Group had with the First Nations peoples and non-Indigenous Queenslanders, as well as their broad aspirations for treaty, truth-telling and justice in this state.

## **Why now?**

In launching the Path to Treaty initiative in 2019, the Queensland Government formally stated that this step is to 'begin a conversation' about this important issue, and gauge public support and aspirations in relation to treaty.

By providing a platform with which to support these discussions, this process is the next step in a line of initiatives government says demonstrates its commitment to a reframed relationship with First Nations peoples in Queensland, including:

- Establishing the *Human Rights Act 2019*, effective from 1 January 2020, which acknowledges the importance of the right of Aboriginal and Torres Strait Islander peoples to self-determination
- The launch of the *Queensland Government Reconciliation Action Plan 2018–2021*
- Legal recognition of Torres Strait Islander child rearing practices
- Establishment of the First Nations Advisor for Housing, Joint Coordinating Committee for Local Thriving Communities and the Queensland First Children and Families Board.

More than this, however, the foundations provided by the decade-long national discussion on constitutional reform, which culminated in the Uluru Statement, alongside various state-based approaches to treaty, have laid the ground for Queensland to begin its own treaty journey.

<sup>7</sup> H Hobbs and G Williams (2018) *The Noongar Settlement: Australia's First Treaty*, *Sydney Law Review*, vol 40. 1-38.

<sup>8</sup> Queensland Labor (2016) *Queensland State Policy Platform 2016*. State Conference of the Queensland Branch of the Australian Labor Party, 29–30 October 2016.



# 1. A BRIEF HISTORY OF QUEENSLAND

## **Warning: Distressing content**

**This report contains material that may** be confronting and disturbing, dealing with challenging content such as racism, removal, sexual assault, misogyny, and violence. Sometimes words or information can cause sadness or distress, or trigger traumatic memories for people, particularly survivors of past abuse, violence or childhood trauma

Aboriginal and Torres Strait Islander peoples should be aware that this report may also contain names and references of deceased persons.

For some people, these responses can be traumatic and overwhelming. If you need to talk to someone, support is available.

Call Lifeline on 13 11 14 anytime for confidential telephone crisis support.

## **Language**

This report contains information and excerpts from documents, newspaper articles or archival records written many years ago. Some material may contain language or terms that reflect views of the period in which the item was written and which are unacceptable today.

While the information may not reflect current understanding or practice, it is provided for historical context. We apologise for any offence reading such language might cause.

## Introduction

In 2020, the people of Queensland have the opportunity to address, with courage and determination, the significant issue of making a treaty with First Nations peoples. This is long overdue; but essential for all Queenslanders to move forward to a more equitable and just future. The complex and often confronting history between First Nations peoples and the incoming settlers must be faced in all its facets. Many painful issues such as frontier conflicts, and the destruction of First Nations peoples' lives, cultures, land and autonomy with its enduring consequences felt to this day, must now be confronted. In this historical account, these patterns of dispossession, segregation and intergenerational disadvantage, alongside moves to re-establish autonomy and self-determination will be charted. By this means, the truth and its ultimate healing powers will contribute to all peoples in Queensland moving towards a harmonious and respectful future.

## Custodians

For at least 65,000<sup>9</sup> years, rich and vibrant societies of First Nations peoples thrived in what is now known as Queensland.

As the proud custodians of the land, air, seas and waters, together with their unique cultures and laws, First Nations peoples established successful societies to manage their lands and seas in harmony with ever changing environments. Each nation had its own separate territory with distinct borders, but for millennia coexisted with multiple surrounding nations and peoples. Each nation was autonomous and responsible for their territories with clear demarcations, protocols and interactive behaviours in place, which acted as an effective form of foreign policy. Extensive trading relationships with neighbouring and distant nations emerged, allowing for the dissemination of specialised commodities such as shells and ochre, as well as new knowledge, technologies and information.

Some 65,000 years ago, both land and sea formations were different from today. First Nations peoples adapted to massive environmental changes, possessing the most enduring ancient, vibrant culture still on earth, characterised by ingenuity, creativity and resourcefulness. Some 200 distinct nations with more than 90 languages and dialects, resided in what later became Queensland.<sup>10</sup>

Queensland is unique in that it is the only state in Australia with two distinct First Nations peoples, Aboriginal people and Torres Strait Islander people. The mainland territory, covering some 1.7 million square kilometres, extends from the tip of Cape York down to the snowy areas of the border with New South Wales and to the deserts adjacent to the Northern Territory. This land emerging from Sahul—a fragment of Gondwanaland—is more than 1,800 million years old. What became Australia is on an ancient land mass.

To the north of this land mass is the Torres Strait, a waterway consisting of hundreds of islands between the Northern Peninsula area of Queensland and Papua New Guinea.<sup>11</sup>

A land bridge once connected the continent of Australia to Papua New Guinea, with these islands forming after sea levels rose some 7,000 to 8,000 years ago. Recent archaeological findings show people lived in the Torres Strait and hunted large marine fauna soon after these islands were formed. Archaeologists argue that earlier evidence of human occupation in the Torres Strait has potentially been lost due to fluctuating sea levels over time.<sup>12</sup>

The First Nations peoples were healthy, well-nourished and fit. They were isolated for 65,000 years from the diseases which were transmitted by domesticated animals and birds into the closely inhabited human settlements in Asia, Europe and Africa. Their lifestyle, without native beasts of burden or horses, required lifelong fitness to gather and cultivate food, build shelters, and move location as climate and seasonal variation demanded.<sup>13</sup> Living in small bands, the daily living environments were hygienic and well maintained.

Over a period of less than a century these resourceful, adaptable, and competent peoples were dispossessed of their lands and subjected to the alien and hostile laws of Britain. Destructive government policies, established with the colonisation of Queensland, were imposed to annihilate their society and destroy their languages, cultures, and connections to country. The impact of colonisation on and the ensuing economic, spiritual and cultural dispossession of both Aboriginal peoples and Torres Strait Islander peoples, has resulted in enduring intergenerational trauma and economic disadvantage. The legacy of long-term effects and the lack of opportunities such as employment, training, housing and education in previous generations has been transmitted to the present generation with often devastating consequences, such as high suicide rates among youth.

Despite these multiple and pervasive intrusions and interventions, First Nations peoples retain their social, cultural and political characteristics distinct from the dominant culture. Their resilience and strength remains the cornerstone to their survival.

<sup>9</sup> C Clarkson, Z Jacobs, Z., B Marwick, et al. (2017) *Human occupation of northern Australia by 65,000 years ago*, *Nature*, vol. 547, 306–310.

<sup>10</sup> R Evans (2007) *A History of Queensland*. Cambridge University Press, p 3.

<sup>11</sup> *Traditional Owners of the Inner Islands of the Torres Strait are Aboriginal peoples of the Kaurareg First Nations. The Torres Strait Inner Islands are: Kurriri/Hammond, Mureleg/Prince of Wales, Ngurupai/Horn and Waiben/Thursday Island Torres Strait Island Website*, available online at: <http://www.tsra.gov.au/the-torres-strait/community-profiles> (accessed 24 January 2020).

<sup>12</sup> *Australian Archaeological Association Website*, available online at <https://australianarchaeologicalassociation.com.au/7000-years-of-settlement/> (accessed 17 January 2020).

<sup>13</sup> Refer to sources such as A McGrath and M A Jebb, (eds.) (2015) *Long History, Deep Time: Deepening History of Place*, ANU Press; T Bottoms (1999) *Djabugay Country: An Aboriginal History of Tropical North Queensland*, Allen and Unwin, p. 9; J Diamond (1998) *Guns, Germs and Steel: The Fates of Human Societies*, Norton; G Blainey (1975) *Triumph of the Nomads; a history of ancient Australia*, Viking Books; B Pascoe (2019) *Dark Emu: Black Seeds: Agriculture or Accident?* Magabala Books.

# The Colonial settlement of Queensland

## Terra Nullius declared

At sunset on Wednesday 22 August 1770, the history of this continent and the lives of its peoples who had nurtured this ancient land for 65,000 years changed forever. Lieutenant James Cook took possession of the Great Southern Land he was instructed to locate, declaring it 'terra nullius'. This occurred on Bedanug Lag—later termed Possession Island—in the Torres Strait, the ancestral lands of the Kaurareg and Gudang Yadhaykenu peoples. This was entirely against his secret instructions from the British Admiralty which had instead asked him to:

*...observe the Genius, Temper, Disposition and Number of the Natives... and Shewing them every kind of Civility and Regard... You are with the Consent of the Natives to take Possession of the Convenient Situations of the Country, in the name of the King... if you find the Country Uninhabited to take possession for his Majesty by setting up Proper Marks and Inscriptions, as first discoverers and possessors.<sup>14</sup>*

Cook and his party observed diverse peoples as they travelled along the east coast of the continent. Contrary to his instructions, Cook took possession of this land for the British Crown without 'Consent of the Natives'. Unlike New Zealand and Canada, the possession of this territory was not marked by proper treaties with the First Nations peoples, and by this one act, outside of his instructions, Cook forever altered the course of our history.

Cook's action effectively claimed the entire east coast of the continent for the British Crown. In 1788 a small British convict settlement was established in New South Wales. The first colony was large in scale, extending from the Torres Strait in the north to Cape Otway in the south. By the early decades of the nineteenth century farming and pastoralism began transforming the convict settlement. As settlers started moving outside of the narrow confines of the areas around Sydney, administration of the frontier areas was increasingly hard to maintain. New colonies were formed; Victoria in 1851 and Queensland on 10 December 1859. The new boundary for Queensland included the larger town centres of Ipswich and Brisbane.

Before the formal establishment of the colony of Queensland, there had been official moves to extend into more remote northern reaches of New South Wales. In 1824, John Oxley sailed from Sydney to ascertain the possibility of establishing a secondary detention centre in Moreton Bay.<sup>15</sup> The harsh penal settlement in Moreton Bay—with its rigorous punishments and hard labour—operated until 1839. It was largely contained to three areas: Stradbroke Island (Minjerribah), what is now the Brisbane CBD, and the convict women's outstation at Eagle Farm. This caused limited geographic impact upon the Jagera, Yuggera and Turrabul peoples,<sup>16</sup> although there had been some sporadic hostilities.<sup>17</sup>

However, there were other, more deadly consequences of the penal settlement with the introduction of easily transmittable diseases.<sup>18</sup> As settlement chaplain and later Missionary Johannes Handt recorded in 1841, tuberculosis and venereal disease were already rife, resulting in high mortality and morbidity. Handt was alarmed at the high death rate of some thirty percent among formerly healthy young women and ill health of babies and small children.<sup>19</sup>

This lethal process, along with later practices of the aggressive land-hungry settlers and their workers, and later policies of extermination from the role of the Native Mounted Police, were to characterise frontier society as it moved relentlessly northwards and westwards.

More comprehensive forms of destruction emerged when these northern regions of New South Wales were opened to limited free (non-convict) white settlement in 1842. By early 1840 pastoralists, including the Leslie Brothers, had entered the land of what is now the Darling Downs with their extensive flocks and armed convict workers. This new form of occupation signalled a stark change in interactions between the newcomers and the original inhabitants; the pastoralists were intent upon acquiring huge tracts of land at any cost and by any means.<sup>20</sup>

<sup>14</sup> Admiralty Secret Instruction to Lt James Cook 30 July 1768, National Library of Australia, <https://www.nla.gov.au/content/secret> (accessed 11th Jan 2020); for wider implications refer to H Reynolds (1987) *The Law of the Land*, Penguin Books, pp. 7-81; L Ford (2010) *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788-1836*, Harvard University Press; T Rowse and L Ford (eds.) (2012) *Between Indigenous and Settler Governance*, Routledge.

<sup>15</sup> R Fitzgerald et al. (2009) *Made in Queensland: A New History*, University of Queensland Press, p. 12.

<sup>16</sup> R Evans (1992) "The mogwi take mi-an-jin: Race Relations in the Moreton Bay Penal Settlement, 1824-42" in R Fisher (ed.) (1992) *Brisbane: The Aboriginal Presence 1824-1860*, Brisbane History Group papers, No 11, pp. -30; J G Steele (1975) *Brisbane Town in convict days 1842-1842* (St. Lucia, University of Queensland Press); R Fisher, "From depredation to degradation: The Aboriginal experience at Moreton Bay 1842-60" in Fisher, *Brisbane: The Aboriginal Presence*, also refers to the earlier period of the convict system.

<sup>17</sup> R Evans, *Fighting Words: Writing about Race*. (Brisbane: University of Queensland Press, 1999) p. 48-78.

<sup>18</sup> V Donovan (2002) *The Reality of a Dark History: From Contact and Conflict to Cultural Recognition*, Queensland Government, p. 68. This Queensland Government publication asserts that some Indigenous women were kept as sex slaves while others acted as prostitutes in the penal settlement. *ibid*. This volume has an excellent coverage of history in various eras.

<sup>19</sup> Report by J Chaplain Handt (1841) *Report of transactions relative to condition of the Aborigine in Moreton Bay for the year of 1841*, 27 November 1841, NSW Colonial Secretary's Office, Queensland State Archives. (QSA), microfilm 12; R Evans (1992) "The mogwi take mi-an-jin: Race Relations in the Moreton Bay Penal Settlement, 1824-42" in Rod Fisher (ed.) (1992) *Brisbane: The Aboriginal Presence 1824-1860*, Brisbane History Group papers, No 11, p. 22.

<sup>20</sup> M Copeland et al (2006) *One Hour, More Daylight: A Historical Overview of Aboriginal Dispossession in Southern and Southwest Queensland, Toowoomba, The Social Justice Commission*, pp. 23-34; P Collins (2002) *Goodbye Bussamarai: The Mandandandanyi Land War, Southern Queensland, 1842-1852*, St. Lucia, University of Queensland Press; H McKellar (1984) *Matya-Mundu: A History of the Aboriginal People of South West Queensland, Cunnamulla, Santos and Cunnamulla Native Welfare Association*; J Walker (1988) *Jondaryan Station: The Relationship between Pastoral Capital and Pastoral Labour*, St. Lucia, University of Queensland Press; L Ford (2008) "From Pluralism to Territorial Sovereignty: The Settler revolution, The Trial of Mow-watty in the Superior Court of New South Wales", *Indigenous Law Review*, 7, 2008, pp. 69-80; L Ford (2017) "Protecting the Peace on the Edges of Empire: Commissioners of Crown Lands in New South Wales" in *Protection and Empire: A Global History*, Cambridge University Press, pp. 175-193.

### Kilcoy mass poisoning: a test case

The means for local acquisition were almost beyond comprehension in their devastation and intended cruelty. At Kilcoy, some 60 Jinibara people were poisoned with flour containing strychnine in February 1841,<sup>21</sup> in retaliation after several shepherds were attacked. Missionary William Schmidt at the Nundah mission among the Turrabul, heard first-hand from survivors and reported his findings to the authorities immediately.

No European person was prosecuted for the mass murder at Kilcoy: the Commissioner for Crown Lands and former Commandant of the New South Wales Native Border Police, Waterloo veteran Dr Stephen Simpson, was sympathetic to the wealthy and often aristocratic squatters,<sup>22</sup> like Mackenzie, Eton-educated Sir Arthur Hodgson, later an inaugural Queensland Legislative Council member and Sir Gilbert Eliot, who was later the first Speaker of the Queensland Legislative Assembly.<sup>23</sup> The Kilcoy Massacre contained its notoriety, discussed again officially in the 1861 Select Committee to enquire into the operation on the Native Police Force.<sup>24</sup>

Queensland was never to have its own version of the 1838 Myall Creek Massacre where seven white shepherds were found guilty of the murder of First Nation Wirrayaraay people and publicly executed.<sup>25</sup> This area around Inverell witnessed the same patterns of colonisation which saw intrusion into First Nation lands, fierce and protected resistance by traditional owners and subsequent indiscriminate massacres. What made this case unique in Australian colonial history is that the white killers were brought to justice and a jury convicted them of murder.

Attempts by the colonial government in Sydney led by the progressive governor, Sir George Gipps, to limit the powers of the wealthy well-connected squatters from further northern pastoral expansion and land acquisition, were defeated. Within two decades Gipps's policy of limitation of expansion was deemed a failure and incapable of administration. In February 1859, ten months before the colony of Queensland was established, colonial authorities commissioned surveyor George Augustus Dalrymple to explore and survey lands in North Queensland with the possibility of 'opening up' the northern area of Queensland settlers.<sup>26</sup>

### Resistance

The incursions by pastoralists were relentless regardless of any attempts to regulate moves into northern and western districts. First Nations peoples defended their lands with the tactics of guerrilla warfare. They had the initial advantage as they knew the land intimately and held far greater numbers than the invaders and their animals. In many areas, resistance and defence of traditional territories was effective and drove back colonial settlement for some time. But these were temporary victories.<sup>27</sup>

There were notable resistance leaders, including senior lawman Dundalli (1820–1855), from the Dalambara clan of the Dalla language group located in the Blackall Ranges, North West of Moreton Bay. He was initially accused of killing a shepherd on the Archer brothers, Durundur Station in 1843. He eluded capture for several years during which he directed further attacks on other stations. He was eventually captured in Brisbane in 1854. In the November 1854 Supreme Court sitting, Dundalli was convicted of two murders. As he was not a Christian, he could not take an oath on the Bible and was not sworn in at trial.

Nor were there then rights of appeal in the colonial justice system. Dundalli did however speak English fluently. Dressed and coiffured in the European manner, he told the court both the settlers' and his own worlds were now set in irreversible collision. He was publicly executed on 5 January 1855 in Queen Street, calling on his kin to avenge his death.<sup>28</sup>

The new colony established its own Native Mounted Police with white officers and Aboriginal troopers, who were themselves survivors from earlier conflicts, as a force to move with the expanding frontier and to quell any resistance.<sup>29</sup> The last recorded major battles occurred in 1884 when the Kalkatungu/Kalkadoon people in the north west attacked and killed a pastoralist and five Native Mounted Police members. There had been a series of raids on stations earlier in retaliation of the depletion of food supplies due to the presence of introduced livestock.

21 There is no suggestion that Mackenzie authorised or endorsed this measure. He was absent from this station at the time of the poisonings. Refer to John Mackenzie – Smith (2009) "Kilcoy, the first six months – Sir Evan Mackenzie's albatross", *Journal of the Royal Historical Society of Queensland*, 13, Issue 12, pp. 429-444; John Mackenzie-Smith (2009) "The Kilcoy poisonings revisited", *Queensland History Journal*, v. 20, issue 11, pp. 593-605.

22 B Thorpe, *Colonial Queensland: Perspectives on frontier history*, (UQP 1996), pp 47, 97-98, 105, 114, 148.

23 J Iltis, "Simpson, Stephen (1793-1869)" <http://adb.anu.edu.au/biography/simpson-stephen-2666/text3715> accessed 20 January 2020.

24 M Tedeschi (2017) *Remembering the Myall Creek Massacre*, *The Monthly*, 1 June; M Tedeschi QC (2017) *Murder at Myall Creek: the trial that defined a nation*, Simon and Schuster Australia.

25 M Tedeschi (2017) *Remembering the Myall Creek Massacre*, *The Monthly*, 1 June; M Tedeschi QC (2017) *Murder at Myall Creek: the trial that defined a nation*, Simon and Schuster Australia.

26 N Loos (1982) *Invasion and Resistance: Aboriginal-European Relations on the North Queensland Frontier, 1861-1897*, ANU Press, p. 28.

27 R Evans, K Saunders, M Cronin (1993) *Race Relations in Colonial Queensland, A History of Exclusion, Exploitation and Extermination*, University of Queensland, p. 33-66; M Copeland et al (2006) *One Hour, More Daylight: A Historical Overview of Aboriginal Dispossession in Southern and Southwest Queensland, Toowoomba, The Social Justice Commission*, pp.35-38. This material refers to the Bigambul resistance on the Macintyre River.

28 L Connors (2005) Dundalli (1820-55) <http://adb.anu.edu.au/biography/dundalli-12895> (accessed 11 January 2020). There were also victories such as One Tree Hill in 1843 led by Moppy and son, Multuggerah. Over 100 soldiers, police and settlers tried to drive out First Nation warriors; refer to R Kerkhove and F Uhr (2019) *The Battle of One Tree Hill – The Aboriginal Resistance that Stunned Queensland*, Brisbane, Boolarong Press; Moppy is cited in K Walsh and J Hooton (1993) *Australian Autobiographical Narratives: An annotated bibliography*, Volume 1: To 1850, Canberra, Australian Scholarly Editions Centre, University College, ADFA and National Library of Australia; W Ross Johnston (1990) *Urquhart, Frederic Charles (1858-1935)* available online at: <http://adb.anu.edu.au/biography/urquhart-frederic-charles-8901> (accessed 21 January 2020); H Reynolds (1982) *The Other Side of the Frontier*, Penguin.

29 J Richards (2008) *The secret war: A true history of Queensland's Native Police*, St Lucia, University of Queensland Press; R Evans, K Saunders, M Cronin (1993) *Race Relations in Colonial Queensland, A History of Exclusion, Exploitation and Extermination*, University of Queensland, p. 55-66; V Donovan (2002) *The Reality of a Dark History: From Contact and Conflict to Cultural Recognition*, Queensland Government, p75-79.

Known as Battle Mountain or the Battle of Kajabbi and Kalkatungu warriors fought armed combat with well-armed para-military forces led by Sub Inspector F.C. Urquhart, later the Queensland Police Commissioner.<sup>30</sup> The Kalkadoon/Kalkatunga Memorial commemorates their very important resistance.

### The consequences of Massacres

Each clan often fought to preserve its own lands faced against overwhelming odds. The British settlers had the advantages of horses to travel swiftly and the possession of guns and the feared Snider rifle with its bayonet from 1866 and the Patent Terry breech-loading rifle.<sup>31</sup> The Native Mounted Police continued to exist until 1904 with more than 200 camps and 1,800 conflicts. A data base of over 11,000 documents, containing details of 400 Native Mounted Police and 650 First Nations troopers was launched at the Queensland Museum on 19 December 2019.<sup>32</sup> In many respects, the Native Mounted Police operated as a 'search and destroy' units to eliminate Aboriginal resistance, not through armed combat with warriors, but often by surprise lethal raids on camps.

From 1841 to 1918 more than thirty recorded large massacres took place from Kilcoy in Jagera Country to Mornington Island in the Gulf of Carpentaria, and many places in-between. There were also many smaller massacres. Shooting parties were also commissioned by pastoralists, to the point they were included in Christmas Day celebrations as an activity and termed 'snipe hunting'.<sup>33</sup> The Rev. George Carrington who travelled extensively in remote areas described colonialism in Queensland as "... *the gradual work of extermination*."<sup>34</sup> It is impossible to calculate the numbers of people killed during this massacre period, but there are many reports of between 60 and 100 people killed in most of these incidents. New research suggests that over 40,000 First Nations people were killed directly, though exact numbers can never be known.<sup>35</sup>

### Maritime Frontier

Spanish navigator Luis Váez de Torres named the Strait for Spain when he sailed through the passageway in 1606. Today, First Nations peoples of the Torres Strait call it 'Zenadth Kes'. The region has been of great strategic importance to the nation of Australia as it is the only area on the continent that shares a border with another nation state.<sup>36</sup> Queensland annexed the Torres Strait up to sixty miles north from the coast of Cape York in 1872. The remaining islands of the Torres Strait were annexed in 1879 by an act in the Legislative Assembly in Brisbane, making the Torres Strait a part of Queensland<sup>37</sup> and deeming those First Nations peoples British Colonial Subjects and their lands and waters the property of the Crown. The British colonists occupied this new territory without any negotiations or treaty process with its owners.

The first European settlement was established on Albany Island in 1862, before relocation to Darnley Island two years later while Thursday Island became the administrative centre in 1877.<sup>38</sup> One of the first major initiatives of the newly separated Queensland Government was to establish a contingent of British marines in the Torres Strait to provide for its defence.<sup>39</sup> Thus the area was of crucial strategic significance. Largely, however, the area was the centre of the maritime industries which had begun in the 1850s. The profit from these industries in the Torres Strait, including *bêche-de-mer* (sea cucumber) for the Chinese market, was not good.<sup>40</sup> This changed in 1869 when pearling became a more lucrative industry. The pearl shell rush in the 1870s drew interest and attracted workers from around the world.<sup>41</sup> Profits were high with annual exports worth £87,000 in 1883.<sup>42</sup> With this came introduced diseases such as smallpox, measles, tuberculosis and pneumonia which significantly decreased some populations in the Torres Strait by the end of the 1870s.<sup>43</sup>

- 30 R Evans, K Saunders, M Cronin (1993) *Race Relations in Colonial Queensland, A History of Exclusion, Exploitation and Extermination*, University of Queensland, p. 46; R E Armstrong (1980) *The Kalkadoons: a study of an Aboriginal tribe on the Queensland frontier*, Brisbane, William Brooks, pp. 115 -147; D J Mulvaney, "Battles in the Bush: Pinjarra and Battle Mountain", in D J Mulvaney (ed.) (1989) *Encounters in Place: Outsiders and Aboriginal Australians 1606-1985*, St Lucia, University of Queensland Press; V Donovan (2002) *The Reality of a Dark History: From Contact and Conflict to Cultural Recognition*, Queensland Government, pp. 79-80; B Rosser (1985) *Dreamtime Nightmare: Biographies of Aborigines under the Queensland Aborigines Act*, Canberra, Australian Institute of Aboriginal Studies refers to the history of the region.
- 31 K Wills (1895) "Reminiscences", *Brandon Papers*, SLQ, Oxley Memorial Library (OML) OM75/75/3 cited in R Evans (2010) "The country has another past: Queensland and the History Wars" F Peters-Little et al, (eds.) (2010) *Passionate Histories: Myth, Memory and Indigenous Australia*, Canberra, ANU Press, UQ eSpace (accessed 19 January 2020).
- 32 "The Frontier Conflict and Native Mounted Police in Queensland Database Launch", *Queensland Museum*, 19 December 2019. The team was led by Dr L Wallis, Nulungu Research Institute, Notre Dame University in Western Australia. In *National Indigenous News*, 19 December 2019, accessed online 11 January 2020; the Massacre website project led by Professor L Ryan also contains information on this topic.
- 33 R Evans, K Saunders, M Cronin (1993) *Race Relations in Colonial Queensland, A History of Exclusion, Exploitation and Extermination*, University of Queensland, p78-79.
- 34 R Evans, K Saunders, M Cronin (1993) *Race Relations in Colonial Queensland, A History of Exclusion, Exploitation and Extermination*, University of Queensland, p. 25.
- 35 R Evans and R Orsted-Jensen (2014) "I Cannot Say the Numbers that were Killed", *Assessing Violent Mortality on the Queensland Frontier*, Australian Historical Association Conference Paper, located in UQ eSpace accessed 21 January 2020; R Orsted-Jensen (2011) *Frontier History Revisited: Colonial Queensland and the 'history war'*, Coorparoo, Lux Mundi Publishing.
- 36 J Burton, Anthropologist. History section on the Torres Strait Regional Authority website, (accessed 13 January 2020).
- 37 Burton, Anthropologist. History section on the Torres Strait Regional Authority website, (accessed 13 January 2020).
- 38 V Donovan (2002) *The Reality of a Dark History: From Contact and Conflict to Cultural Recognition*, Queensland Government, p. 65.
- 39 Governor G F Bowen to Colonial Office, 9 December 1861, QSA GOV 22, pp. 105-121. Bowen and Premier Robert Herbert even envisaged the area as a future Singapore.
- 40 C Fatt Yong (1974) *Lowe Kong Meng (1831-1888)* available online at: <http://adb.anu.edu.au/biography/lowe-kong-meng-4043> (accessed 18 January 2020). He owned six luggers in the Torres Strait from 1863.
- 41 G J Abbot (1974) *Merriman, James (1816-1883)*, available online at: <http://adb.anu.edu.au/biography/merriman-james-4190> (accessed 18 January 2020). He is regarded as the founder of the pearl shelling industry for export.
- 42 G C Bolton (1969) *Chester, Henry Marjoribanks (1832-1914)* available online at: <http://adb.anu.edu.au/biography/chester-henry-marjoribanks-3199/text4805>, (accessed 30 January 2020).
- 43 J Beckett (1987) *Torres Strait Islanders: Custom and Colonialism*, University of Queensland; D Bird Rose (1991) *Hidden Histories: Black Stories from Victoria River Downs, Humbert River, and Wave Hill Stations*, Canberra, Aboriginal Studies Press; K Griffiths et al (2016) *How Colonialism determines social justice and Indigenous health – a review of the literature*, *Journal of Population Research*, v. 33, pp. 9-30.

## Tropical agricultural and mining frontiers

Pastoralism was not the only threat to First Nations peoples' ownership and occupation of land. Apart from pastoralism the discovery of minerals posed grave threats to First Nations lands and autonomy. The discovery of gold at Gympie brought thousands of miners to the Mary River district. In 1871 gold was discovered at Charters Towers in North Queensland where the lands were considered unsuitable for pastoralism. Other centres like Mount Morgan, Cloncurry, Palmer River near Cooktown and Laura, Ravenswood and later the Atherton Tableland saw major incursions into traditional lands.

The expansion of settlement with sugarcane cultivation in the coastal north brought new immigrant communities into Queensland. Sugarcane was Queensland's only significant tropical agricultural industry and between 1870 and 1890 the export of sugar gave a 'sense of permanency' to towns like Townsville and Mackay in North Queensland.<sup>44</sup>

In 1863 Robert Towns commenced the 'blackbirding' of South Pacific indentured labourers into the Logan and Cleveland areas, much to the outrage of progressive members of parliament who feared the trade would become a new system of slavery.<sup>45</sup> Over 62,000 people (predominantly young men aged 16 to 25) came from some 80 Pacific Islands, primarily Vanuatu and the Solomon Islands.<sup>46</sup> Today numerous Australian South Sea Islanders are the Australian-born direct descendants of people who were brought to Australia between 1863 and 1904 to work as indentured labourers in the primary industries of cotton, pastoralism, and sugar. Many have married into Aboriginal and Torres Strait Islander families creating long-standing connections to Australia's First Peoples.

## Removal and relocation

The 1800s saw the establishment of missions and reserves across the newly established colony of Queensland. Many First Nations peoples were forcibly removed from their lands and placed either on church-run missions—led by missionaries—or on reserves established under the *Aboriginals Protection and Restriction of the Sale of Opium Act 1897* (the 1897 Act) and subsequent state government legislation.

The following section provides an overview of the removal and relocation era, which saw many First Nations peoples impacted by early colonial incursion, progressively disposed, prevented from pursuing their own lives and cultures and devastated by disease and malnutrition.

### Christian missions

The first Church mission in Queensland was established by German missionaries under the auspices of the London Missionary Society in Brisbane at Zion Hill, on the site of a traditional pathway in 1838. The missionaries often acted as intermediaries for the local Turrabul and Ningi peoples advocating on their behalf.<sup>47</sup> The next mission was established on Stradbroke Island (Minjerribah) in 1843 by the Italian Catholic Passionist Fathers using the discarded convict buildings and jetty at Dunwich. It was entirely unsuccessful and abandoned in 1847.<sup>48</sup> In 1876 a most remarkable Scottish Catholic priest, Father Duncan McNab founded a mission reserve in Mackay with the intention of allowing the local peoples—highly displaced by the sugar industry—to make a claim for title under the *Lands Act*. He saw a loophole which could give them perpetual land rights. This loophole was closed, and no grants were ever made.<sup>49</sup>

In July 1871 the London Missionary Society arrived at Erub (Darnley Island) marking the arrival of the Christian Doctrine in the Torres Strait. When missionaries arrived most of the Islanders' sacred emblems, sacred places and shrines were destroyed. With the introduction of diseases, populations on some islands was reduced by 50 per cent.<sup>50</sup> The London Missionary Society established three missions on government gazetted lands throughout the Torres Strait, taking over the best land for gardening.<sup>51</sup>

The work of the missionaries in the Torres Strait was largely embraced by Islanders. The Christian Doctrine contained similar beliefs and values to the traditional religions of the islands.<sup>52</sup> The missionaries assisted with peace-making between the people of the Islands and neighbouring groups.<sup>53</sup> The missionaries worked with the Queensland Government (after annexation) to deter the violent raids perpetrated on Islanders from foreign vessels of pearlers and pirates.<sup>54</sup>

44 R Fitzgerald et al. (2009). *Made in Queensland: A New History*, University of Queensland Press, p 22.

45 R Evans, K Saunders, M Cronin (1993) *Race Relations in Colonial Queensland, A History of Exclusion, Exploitation and Extermination*, University of Queensland, p. 150.

46 Queensland Government, Department of Local Government, Racing and Multicultural Affairs website, available online at: <https://www.dlgrma.qld.gov.au/multicultural-affairs/multicultural-communities/australian-south-sea-islanders.html>, (accessed 13 Jan 2020).

47 German Missionaries in Australia - A web-directory of intercultural encounters, Griffith University website, (accessed 11 January 2020). N Gunson, "A Missionary Expedition from Zion Hill (Nundah) to Toorbul, Moreton Bay District, in 1842-43": *The Journal of the Reverend K.W.E. Schmidt*, press files anu.edu.au/resources 02, accessed 11 January 2020.

48 S Girola (2012) *The Passionist Mission of Stradbroke Island (1843-1847)*, UQ eSpace (accessed 11 January 2020).

49 K Saunders (2009) *Queensland: 150 Years of Achievement*, Sydney, Focus Books, p.6; Henry Reynolds in *The Law of the Land*, discusses the South Australian colonial attempts to recognise First Nation land rights, pp. 81-148.

50 N Sharp (1993) *Stars of Tagai: The Torres Strait Islanders*, Canberra, Aboriginal Studies Press, p. 100-103.

51 A Shnukal (2004) "Marine Industries and Mabuyag, 1870 -1980" in *Memoirs of the Queensland Museum: Cultural Heritage Series*, 4 (2), p61.

52 A Shnukal (2004) "Marine Industries and Mabuyag, 1870 -1980" in *Memoirs of the Queensland Museum: Cultural Heritage Series*, 4 (2), p100.

53 A Shnukal (2004) "Marine Industries and Mabuyag, 1870 -1980" in *Memoirs of the Queensland Museum: Cultural Heritage Series* 4 (2), p101.

54 A Shnukal (2004) "Marine Industries and Mabuyag, 1870 -1980" in *Memoirs of the Queensland Museum: Cultural Heritage Series* 4 (2), p101.

In 1886 the Evangelical Lutheran Church established a mission at Cape Bedford near Cooktown. Unlike many other institutions, it was characterised initially as a sanctuary for those First Nations peoples who survived a vicious mining frontier on the Palmer River, where gold was discovered in 1877. Conflict between Chinese and European miners, the huge numbers of the newcomers and the active presence of a Native Mounted Police contingent did not augur well for the survival of the Guugu Yimithirr and other neighbouring peoples.<sup>55</sup> The Lutherans also established missions at Mona Vale and Bloomfield River.<sup>56</sup>

The Presbyterian Church established missions at Mornington Island, Mapoon, Weipa and Aurukun run by Moravian Missionaries. These missions were extremely strict, particularly in isolating children from their parents. The Church of England, already present in the Torres Strait, founded an unsuccessful mission on the Mitchell River and the enduring Yarrabah Mission near Cairns.<sup>57</sup> Across Queensland there were other small missions which often were of short duration.

### Government reserves

Decades of scientific and folk racism proclaimed the superiority of the British race who supposedly got to the top of the evolutionary chain by the process of survival of the fittest. While the First Nations peoples were depicted as the lowest rung of humans or even the ‘missing link’ after Darwin’s evolutionary theories were popularised during the very year of 1859, when Queensland was formed as a colony. In the later decades of the nineteenth century, the ‘Doomed Race Theory’ held currency.<sup>58</sup> Reserves were to be the beneficent resting place for these people, it was publicly declared, an act of public benevolence to aid the last days of a dying race.<sup>59</sup> The stark reality was far from comforting or promising.

### The Aboriginals Protection and Restriction of the Sale of Opium Act of 1897

Government reserves were established under the 1897 Act, when calls to deal with the issue of diseased and starving fringe dwellers became more urgent.

This new legislation replaced the *Native Labourers’ Protection Act of 1884*.<sup>60</sup> Policies of control and strategies of containment by colonial authorities resulted in the establishment of reserves that acted as both effective prisons and labour pools.<sup>61</sup>

This legislation and its subsequent amendments throughout the twentieth century, enabled a process of further annihilation of First Nations peoples’ cultures and autonomy and set the scene for punitive policies whose effects continue today.

The reserves were established in order to provide ‘protection’ from Chinese employers paying wages in the form of opium alongside the amelioration of suffering and disease.

The *Queensland Figaro* on 5 July 1884 provided an expose of European employers paying wages in opium in the Dawson River district. In the Legislative Assembly debate on the provisions of the 1897 Act, several Members stated that opium was sometimes given to First Nation workers on pastoral stations by the European owners, rather than the scape-goated Chinese.<sup>62</sup>

As many Aboriginal people resided in the more remote areas of Queensland, local police officers were given responsibility as ‘Protectors’ to monitor employment agreements and report through the Police Commissioner to the Chief Protector of Aboriginals. This process operated in a manner that brought First Nation peoples under the watchful surveillance of the police who were also tasked with the actual, on-the-ground forcible removal practices.

Even at the outset, the ethical process of containment of First Nation peoples was questioned. An official report in 1900 acknowledged that:

*...to deal with them [First Nation peoples] effectively, in accordance with any system of justice, would practically have meant the stopping of all settlement until the future of the aboriginals (sic) was definitely arranged.*<sup>63</sup>

55 R Evans, K Saunders, M Cronin (1993) *Race Relations in Colonial Queensland, A History of Exclusion, Exploitation and Extermination*, University of Queensland, pp. 254 passim.

56 K Saunders (1969) *Christian Missions to the North Queensland Aborigines, 1886-1920*, BA Honours thesis in Anthropology, University of Queensland.

57 K Saunders (1969) *Christian Missions to the North Queensland Aborigines, 1886-1920*, BA Honours thesis in Anthropology, University of Queensland.

58 R Evans, K Saunders, M Cronin (1993) *Race Relations in Colonial Queensland, A History of Exclusion, Exploitation and Extermination*, University of Queensland, pp. 118-122; T Bottoms (2013) *Conspiracy of Silence: Queensland’s frontier killing times*, Sydney, Allen and Unwin, p. 1; R McGregor (1997) *Imagined destinies: Aboriginal Australians and the doomed race theory, 1880-1939*, Carlton, Melbourne University Press; G D Smithers (2017) *Science, Sexuality and Race in the United States and Australia 1780-1940*, University of Nebraska Press places these dominant views in Queensland into an international context.

59 Home Secretary Sir Horace Tozer (1844-1916), a successful solicitor and mine owner, who introduced the Bill, spoke at length in parliament on its beneficial aspects. *Queensland Parliamentary Debates (QPD)*, vol. 78, 1897, pp. 1538-1580, p1629.

60 R B Joyce (1984) *Samuel Walker Griffith, St. Lucia, University of Queensland Press*, pp. 112-115 on the political context into which the 1884 Act was passed.

61 J Huggins and T Blake (1992) “Protection or Persecution? Gender Relations in the Era of Racial Segregation” in K Saunders and R Evans, (eds.), *Gender Relations in Australia: Domination and Negotiations*, Sydney, Harcourt, Brace, Jovanovich, pp. 43-50; T Blake (2001) *A dumping ground: a history of Cherbourg settlement*, St. Lucia, University of Queensland Press. Along with Huggins and Blake’s analysis, Blake’s book is a key academic text in this area of historical research. For an overview of the operation of the reserve system refer to V Donovan (2002) *The Reality of a Dark History: From Contact and Conflict to Cultural Recognition*, Queensland Government, pp. 121- 149. To understand the lived experience of “living under the Act” refer to B Rosser (1985) *Dreamtime Nightmare: biographies of Aborigines under the Queensland Aborigines Act*, Canberra, Australian Institute of Aboriginal Studies; M Kennedy (1985) *Born a Half Caste*, Canberra, AIATSIS Press; R Huggins and J Huggins (1994) *Auntie Rita*, Canberra, Aboriginal Studies Press; R Hegarty (1999) *Is That You Ruthie?*, St. Lucia, University of Queensland Press; W Thaiday (1981) *Under the Act*, Townsville, Black Publishing Co.

62 *First Reading of the Aboriginals Protection and Restriction of the Sale of Opium Bill*, *Queensland Parliamentary Debates (QPD)*, vol. 78, 1897, pp. 1540-1545.

63 *Report on the Protection of Aborigines*, QSA Home Secretary’s Office, 13 March 1900, COL/142 in letter 03566, Z1608 Microfilm M1362.

Notwithstanding any reservations about the ethical dimensions of depriving people of their civil liberties, the system proceeded as planned. Clause 9 of the 1897 Act mandated the process for the compulsory removal of First Nation peoples to reserves and their subsequent movement from one reserve to another.<sup>64</sup>

Chief Protector Archibald Meston, an eccentric Scottish journalist who provided the impetus behind the 1897 Act,<sup>65</sup> personally rounded up—using force and the local police—to capture sick and despondent peoples from all over the south east corner of the state. They were transported to Fraser Island (K'gari), without the provision of adequate shelter, clothes, medical supplies or indeed food on arrival or during their compulsory stay. After the pilot initiative of the reserve system was deemed a failure, those who survived the ordeal were forcibly despatched to the Yarrabah Mission.<sup>66</sup>

Elsewhere across the colony, the terrible spectre of desperately ill people without access to medical treatment was all too apparent and the health crisis went unheeded. In 1898, the concerned police constable at Boulia observed that Aboriginal people were nearly all suffering from venereal diseases and that they were “*horrible to look at*”. He also observed that many Aboriginal people were “*dying out very fast*” and that there was “*no-one to cure them or take any interest in them*.”<sup>67</sup> Most people succumbed to diseases including smallpox, tuberculosis, measles, and influenza.<sup>68</sup>

Another issue accelerated the spread of lethal diseases; the sexual exploitation and rape of First Nations girls and women was a pervasive part of colonialism. In 1900, the aforementioned Chief Protector Meston observed that on many stations, there were no white women at all and that Aboriginal women were usually at the mercy of anybody, from the proprietor or manager, to the stockmen, cook, roustabout and jackeroo.<sup>69</sup>

The reserve system, from its inception in 1897, deprived First Nations peoples of all fundamental civil liberties—such as right to choose location, movement, and marriage partner—effectively rendering them as inmates. First Nations people did not go willingly into this closed system of incarceration. The more enlightened Northern Protector of Aboriginals, Dr Walter Roth noted that many people informed him that they were pleased he had not “*come to take them away*.”<sup>70</sup>

In 1904, Torres Strait Islander people became subject to the terms of the 1897 Act and, in this period, the Queensland Government gazetted lands throughout the Torres Strait as reserves. This put in place policies of total segregation and control of Islanders’ movement. Land was gazetted throughout the Torres Strait as Aboriginal reserves.

### Palm Island Reserve

In 1918 an even more draconian institution was established with the Palm Island reserve off the coast of Cardwell acting as a prison-within-a-prison where so called ‘trouble makers’ who protested about incarceration or the appalling living conditions on other reserves could be sent indefinitely,<sup>71</sup> from where they might never see their families again.<sup>72</sup> An extraordinary case highlighted the management of the reserves.

In 1929 the Protector of Palm Island, Robert Curry—a severely traumatised war veteran—was officially reprimanded for his gross breaches of the punishment schedule. After flogging supposed rule-breakers, Curry isolated them on Eclipse or Curacao Island. The following year he murdered his two children by firebombing their home and threatened to kill anyone who stopped his murderous rampage. Deputy Superintendent Hoffman armed eight senior male inmates to stop more deaths. After Curry was killed by their defensive actions, no charges were laid in the formal justice system.<sup>73</sup>

In order to recover costs associated with the implementation of its Protection Policy, the Queensland Government introduced strategies to collect and withhold the wages of Aboriginal workers.<sup>74</sup>

64 Clause 9 of *Aboriginals Protection and Restriction of the Sale of Opium Act 1897* available online at: [https://aiatsis.gov.au/sites/default/files/catalogue\\_resources/54692.pdf](https://aiatsis.gov.au/sites/default/files/catalogue_resources/54692.pdf) (accessed 31 January 2020).

65 S F Stephens (1974) *Meston, Archibald (1851-1924)*, available online at: <http://adb.anu.edu.au/biography/meston-archibald-4191/text6741>, (accessed 20 January 2020).

66 R Evans and J Walker (1977) “*These Strangers where are they going? Aboriginal –European Relations in the Fraser Island and Wide Bay Region 1770-1905*”, in P Lauer (1977) *Fraser Island, Queensland University occasional Papers in Anthropology*, vol, 8, p. 65 *passim*; V Donovan (2002) *The Reality of a Dark History: From Contact and Conflict to Cultural Recognition*, Queensland Government, p. 133; K Frankland (2000) *Brief History of Aboriginal and Torres Strait Island missions and reserves in Queensland*, Department of Aboriginal and Torres Strait Islander Policy, unpublished manuscript.

67 Constable R. Reside, *Boulia to Inspector Brannelly, Longreach, 10 December 1898, QSA, col/140* cited in R Evans, K Saunders, M Cronin (1993) *Race Relations in Colonial Queensland, A History of Exclusion, Exploitation and Extinction*, University of Queensland, p. 100.

68 Donald Gunn was born in 1856 and owned a pastoral property near Warwick. He recalled as a child seeing local peoples over the age of 40 badly scarred by smallpox. This means the smallpox came long before European incursions into the area and were infected as it travelled northwards before 1820. D Gunn (1937) *Links with the Past: A History of the early Days in Australia*, Brisbane, Mills, p. 18. He also refers to the shooting down people because they were “*considered pests*” p. 15. He writes that “*All they [Europeans in the bush] thought about or talked about was the number of niggers they had shot.*” p. 43.

69 R Evans (1999) *Fighting Words: Writing about Race*, Brisbane, University of Queensland Press, p.201-214; H Reynolds (1990) *With the White People*, Ringwood, Penguin Books, p.206.

70 Report of Dr W Roth, Northern Protector of Aboriginals, 24 February (year not cited), QSA, COL/139 *General Correspondence and Papers re Aborigines, Z1604 Microfilm 9M1613*; B Reynold (1988) *Roth Walter Edmund (1861-1933)* available online at: <http://adb.anu.edu.au/biography/roth-walter-edmund-8280> (accessed 19 January 2020). Roth was of Hungarian heritage and studied at Magdalen College, Oxford and St. Thomas’s Hospital London. As well as his training as a physician he was a noted early ethnologist. Some of his early studies were published in the Queensland Parliamentary Papers while other appeared in the Records of the Australian Museum (1907-10). The Walter Roth Museum of Anthropology is located in Georgetown, Guyana. Roth was the strongest advocate for the integrity of life for First Nation peoples among government officials.

71 B Rosser (1973) *This is Palm Island*, Canberra, Australian Institute of Aboriginal Studies is an excellent account of the operation of this draconian reserve.

72 R Evans (2007) *A History of Queensland*. Cambridge University Press, pp.172-3.

73 *Brisbane Courier*, 1 May 1930; Queensland State Archives JUS/N907.

74 R Evans (1999) *Fighting Words: Writing about Race*, Brisbane, University of Queensland Press, p.147-166.

The 1897 Act was also amended in 1902 to ensure that employers paid the wages of Aboriginal workers to the Protector or his nominee as a means of preventing exploitation.<sup>75</sup> Fines were imposed on employers who engaged Aboriginal workers outside of government agreements. Further amendments in 1934 and 1939 reinforced the discriminatory nature of state intervention, particularly in the area of work.<sup>76</sup> Aboriginal women in the government's girls' homes were hired out to service, had no access to their earnings and forfeited their rights to their earnings if they absconded.<sup>77</sup>

Boys were sent out as station hands without any form of consultation as to the suitability of their employer.

Despite the intense punitive nature of the reserve system, First Nations peoples actively engaged and agitated for their human rights and dignity. There were major strategies of resistance and acts of defiance. In 1957 Palm Islanders went on strike when their wages were cut. The Queensland Government dispatched 20 police and a patrol boat to quell the rebellion. Many workers and their families were transported in leg irons to other reserve settlements around Queensland. This was a strange reversal of the very reasons Palm Island was established and maintained for the previous four decades. On Yarrabah mission, there was a major strike over poor conditions and rations in 1958.<sup>78</sup>

### Control in the Torres Strait

Torres Strait Islanders worked in the maritime industry, often under poor and unsafe conditions. This was despite legislation which governed the employment of Torres Strait Islanders, including the *Pearl-shell and Beche-de-Mer Fisheries Act 1881* and *Native Labourers Protection Act 1884*. Samuel Griffith also introduced legislation to protect the traditional fishing rights of Torres Strait Islanders in 1885. Some boats were owned by Islander families, but the majority were 'company boats' owned by entire clans<sup>79</sup> and were heavily involved in the export economy.<sup>80</sup>

From 1930 to 1936, Local Protector JD McLean increased restrictions over the lives of Islanders through increasing police surveillance, introducing curfews, controlling their earnings and banishing individuals to Palm Island.<sup>81</sup> McLean confiscated company boats, moved them to other islands and controlled who could work on them.<sup>82</sup> McLean also removed elected Island Council representatives and appointed his own representatives.

Coinciding with poor work conditions in the pearling industry, Torres Strait Islanders came together to demand better arrangements, they wanted better work conditions and the freedoms afforded to other Queenslanders.<sup>83</sup>

Like First Nations peoples on the mainland, Torres Strait Islanders asserted their claims for fairer conditions. In January 1936, Torres Strait Islanders began a nine-month Maritime Strike, taking 25 luggers to the northern Torres Strait where they lay without returning home. Protests during this time pressured the Protectors to respond to their demands.<sup>84</sup> The geography of the Torres Strait Islands provided conditions that enabled Islanders to organise a strike. Firstly, much of the communications occurred at sea outside the watchful eye of the Protector. Secondly, confining the First Nations peoples to islands allowed them to continue old knowledge practices and share their stories and experiences thus strengthening solidarity in a common cause.

Unlike practices on mainland reserves, Protectors here were far more responsive to calls for reform. Investigations led by Protector C O'Leary into the cause of the strike resulted in a transfer of power at the end of 1936 to the Island Councils from the government teachers, the Aboriginal Industry Board and the Protectors. In 1937 the first inter-island conference of representatives from all island councils was convened on Masig (Yorke Island). This unprecedented event called for equal opportunities in education and greater autonomy in local governance. While some protection restrictions were relaxed after 1937, the protection era continued in the Torres Strait up until the early 1980s through provisions of the *Torres Strait Islanders Act 1939*.<sup>85</sup>

### The Cost to First Nations peoples

#### Assimilation policies

Under the Federal *Electoral Act 1962* First Nations peoples were given voting rights, and by 1965, the Queensland Government had committed to a policy of assimilation for First Nations peoples. This policy, according to Jack Pizzey, the Queensland Minister responsible for Aboriginal Affairs, and Patrick Killoran, the senior bureaucrat in charge of the Department of Native Affairs, aimed to ensure that Aboriginal people attained a "...similar manner and standard of living to that of other Australians" as defined in the *Aborigines and Torres Strait Islander Affairs Act 1965* (the 1965 Act).<sup>86</sup> Sadly, Queensland committed to a policy on which it simply could not deliver.

75 Supplement to the Queensland Government Gazette 1902, pp. 1435-3. This strengthened provisions in the 1897 Act, refer to supplement to the Queensland Government Gazette, December 1902, p. 1388.

76 V Donovan (2002) *The Reality of a Dark History: From Contact and Conflict to Cultural Recognition*, Queensland Government, pp 155-156; pp.158-162.

77 R Huggins and J Huggins (1994) *Auntie Rita*, Canberra, Aboriginal Studies Press. R Huggins (nee Holt) was forcibly sent from her homelands in Carnarvon Gorge as a child to Cherbourg and sent out to work as a domestic servant as a girl; M Kennedy (1985) *Born a Half Caste*, Canberra, AIATSIS Press. This autobiography gives a graphic account of being forcibly sent to Palm Island from her country near Cloncurry in early 1920s. She was sent to work on a cattle station near Charters Towers. T Blake (2001) *A dumping ground: a history of Cherbourg settlement*, St. Lucia, University of Queensland Press addresses this broader issue of reserve management.

78 R Evans (2007) *A History of Queensland*. Cambridge University Press, p213.

79 R Evans (2007) *A History of Queensland*. Cambridge University Press, p186.

80 V Donovan (2002) *The Reality of a Dark History: From Contact and Conflict to Cultural Recognition*, Queensland Government, p149.

81 N Sharp (1993) *Stars of Tagai: The Torres Strait Islanders*, Canberra, Aboriginal Studies Press, p. 184.

82 N Sharp (1993) *Stars of Tagai: The Torres Strait Islanders*, Canberra, Aboriginal Studies Press, p. 209.

83 N Sharp (1993) *Stars of Tagai: The Torres Strait Islanders*, Canberra, Aboriginal Studies Press, p. 197.

84 N Sharp (1993) *Stars of Tagai: The Torres Strait Islanders*, Canberra, Aboriginal Studies Press, p. 183.

85 N Sharp (1993) *Stars of Tagai: The Torres Strait Islanders*, Canberra, Aboriginal Studies Press, p.159.

86 Queensland Government (1965) *Queensland Annual report of the Director of Native Affairs for the year ending 30 June 1965*, Brisbane, Government Printer, p. 1; C M Tatz (1966) *Aborigines: equality or inequality?*, *Australian Quarterly*, vol.38 March, pp. 73-90, at p. 84, 89.

Pizzey argued that the 1965 Act, would provide for 'development' of Aboriginal people and guard against exploitation. The Minister justified and supported the restrictive parts of the 1965 Act. He argued that there was always a certain proportion of Aboriginal people who needed to have their money and property managed by the government. Pizzey estimated 9,000 Aboriginal people were on reserves and a further 100,000 under the 1965 Act lived off reserves.<sup>87</sup> All these people would have their wages, property, and movement controlled by the Department of Native Affairs. In the same year, Killoran argued that the 1965 Act would "promote the wellbeing of all the Aboriginal inhabitants of the State."<sup>88</sup>

This policy that championed more seemingly progressive initiatives, continued the forcible removal from country, the destruction of families and cultures and the prohibition of speaking language or practising ceremonies. Despite being citizens First Nations peoples on reserves were required to have formal permission to marry.<sup>89</sup>

### Exploitation

While the Queensland Government espoused a policy of assimilation it continued to exploit, exclude and deliberately impoverish First Nations peoples. Under the provisions of the 1965 Act, Pizzey argued that Aboriginal people were able to move around more freely.<sup>90</sup> Despite this he acknowledged that Aboriginal pastoral and reserve workers' wages were 'comparatively low', and the government had 'never claimed to be in a position to provide full employment on award wages to all settlement and mission residents'. Minister Pizzey further highlighted how the Department of Native Affairs deducted extra money from the wages of reserve workers, stating that people had to contribute to the cost of their own upkeep on reserves.<sup>91</sup>

Despite pledging a commitment to the new 'progressive' 1965 Act and a policy of assimilation, Queensland Government officials deliberately excluded Aboriginal people from economic development activities in North Queensland, especially in relation to bauxite mining. To ensure bauxite mining could progress, the Queensland Government forcibly removed families from their homes and burnt their houses to the ground to ensure they could not return.<sup>92</sup> The Queensland Government maintained control over the bauxite royalty payments for Aboriginal communities in Aurukun, Weipa and Mapoon in the same way the Department of Native Affairs managed Aboriginal people's property, earnings and Commonwealth benefit payments under the provisions of the 1965 Act.<sup>93</sup>

### The reserve system challenged

By the 1960s the post-World War II anti-racism and civil rights movement in United States of America had spread throughout the world and saw the Commonwealth apply pressure to the Queensland Government about the treatment of First Nations peoples.

This push was also infiltrating First Nations peoples' lives in various ways. First Nations peoples living off reserves advocated for the rights of those incarcerated on them and formed national and statewide lobby groups such as the Brisbane Tribal Council, OPAL, Act Confrontation Committee, and the Federated Council for the Advancement of Aboriginal and Torres Strait Islanders (FCAATSI), Queensland Council for the Advancement of Aboriginal and Torres Strait Islanders (QCAATSI).

These groups were active both within Australia and overseas, strengthening relationships between the UN, World Council of Churches, Amnesty International, Survival International, London Anti-Slavery Society and Aboriginal and Torres Strait Islander lobby groups. The United Nations (UN) and other international organisations were made aware of the Queensland Government's unacceptable, draconian tactics.

At this time, the Commonwealth was keen to ratify various UN conventions, particularly the International Convention on the Elimination of all forms of Racial Discrimination (ICERD). The UN, however, pressured the Australian Government to have all racist legislation removed from its statutes and anti-racism legislation introduced and some form of land rights in place before this could occur.

The racist legislation included the Queensland Government's 1965 and 1971 legislation as well as the Queensland Station Hands Award 1968, which supported the payment of under-award wages to Aboriginal pastoral workers.

The 1967 Constitutional Referendum empowered the Commonwealth to assume limited authority over First Nations affairs. One of the first areas addressed concerned adequate housing. Federal Minister for Housing and Queensland Senator, Dame Annabelle Rankin was committed to improving housing and living standards for all First Nations peoples. The Commonwealth Government had wider concerns in relation to basic human rights. It was also committed to modifying racially discriminatory legislation to meet UN expectations.

87 QSA Queensland Aboriginal Fund File Part 4, 1965 contains copy of Pizzey's speech, p. 3.

88 Queensland Government (1965) Queensland Annual report of the Director of Native Affairs for the Year Ending 30 June 1965, Brisbane, Government Printer, p. 1.

89 A Doobov and R Doobov (1972) 'Queensland: Australia's deep south' in Racism: the Australian experience: A study of race prejudice in Australia, vol. 2 pp 159 -170, edited by F S Stevens Vol 2 Black versus White, Sydney, Australia & New Zealand Book Company; R Kidd (1997) The Way We Civilise: Aboriginal Affairs - The Untold Story, Brisbane, University of Queensland Press, pp. 141-142.

90 A Doobov and R Doobov (1972) 'Queensland: Australia's deep south' in Racism: the Australian experience: A study of race prejudice in Australia, vol. 2 pp 159 -170, edited by F S Stevens Vol 2 Black versus White, Sydney, Australia & New Zealand Book Company; R Kidd (1997) The Way We Civilise: Aboriginal Affairs - The Untold Story, Brisbane, University of Queensland Press, p. 2.

91 QSA Queensland Aboriginal Fund File Part 4, 1965 contains copy of Pizzey's speech, pp. 4-5.

92 R Kidd (1997) The Way We Civilise: Aboriginal Affairs - The Untold Story, Brisbane, University of Queensland Press, p. 222. R Kidd (1997) The Way We Civilise: Aboriginal Affairs - The Untold Story, Brisbane, University of Queensland Press, p. 201-207.

93 R Kidd (1997) The Way We Civilise: Aboriginal Affairs - The Untold Story, Brisbane, University of Queensland Press, p. 201-207.

The Queensland Government policies were increasingly under scrutiny. In particular, the Queensland Government was urged to amend the 1965 Act. By April 1971, the Commonwealth and Queensland governments had reached agreement on some key issues such as Aboriginal people's freedom of movement on and off reserves.

While the *Aborigines Act 1971* (the 1971 Act) was described by Director of Aboriginal Affairs Killoran as the 'third' and most probably 'final' phase towards the total assimilation of Aboriginal people in Queensland, human rights on reserves continued to be denied and abused.<sup>94</sup> However, the 1971 Act was open to criticism on several grounds. Government officials continued to wield enormous powers over the lives of Aboriginal people under sections 17 to 28 and 27 to 47 of the Act.<sup>95</sup> These sections included by-laws, discipline on Queensland Government reserves (including Aboriginal courts), revocation of reserve residence or visit permits, administration of Aboriginal people's estates and controls over property and earnings. For the first time, police were now made responsible for upholding by-laws.<sup>96</sup>

Clearly, the 1971 Act continued to contravene the UN Declaration of Human Rights.<sup>97</sup> The *Commonwealth Racial Discrimination Act 1975* continued to challenge Queensland's discriminatory legislation.

Despite UN and Commonwealth Government concerns and scrutiny, sections of public opinion in Queensland often did not move forward into more inclusive and progressive attitudes.

### Public opinion

With the influx of Aboriginal people into Queensland towns and cities, it was clear that the assimilation policy was often not supported. On one hand the Queensland Government removed restrictions on First Nations peoples from voting in state and local government elections in 1965. However, in the electoral seat of the Premier Joh Bjelke-Petersen, it was revealed that citizens in 1969 did not support the state government's policy of assimilation because they preferred that First Nations peoples be kept on the reserves.<sup>98</sup>

In 1968, a non-Indigenous person was quoted in The Australian newspaper as saying: "*We already have one Aboriginal family and they're very nice. I wouldn't like our street to be turned into an Aboriginal settlement. I've got nothing against them, but I don't want them next door to me.*"<sup>99</sup> At this time Australian mainstream media presented and regularly facilitated racism and racist views.

Public concerns over post-1967 Commonwealth Aboriginal housing and welfare benefits proliferated. Governments, both state and Commonwealth, were subjected to competing demands. On the one hand, the Commonwealth Government in response to UN calls for more progressive racial policies, instituted far reaching reforms. On the other hand, voter resistance to these measures could not be ignored.

### Torres Strait Islands state of affairs

Modifications to the Protection Policies of the 1960s, as well as the demise of the pearling industry, prompted a mass exodus of Torres Strait Islanders to mainland Queensland.<sup>100</sup> They settled in cities and towns mainly on the east coast of Queensland, with the largest reported mainland population residing in Townsville by the 1970s.<sup>101</sup> During this time Torres Strait Islander people worked in various sectors including the railways, cane-cutting and factories.

At a national level, the Indigenous rights movement paved the way for Torres Strait Islanders to advocate for constitutional reform alongside Aboriginal peoples leading up to the 1967 Referendum. Previously, in 1964 the leading national advocacy group, the Federal Council for the Advancement of Aborigines (FCAA), amended their constitution to now include Torres Strait Islanders and the organisation became known as FCAATSI.<sup>102</sup>

Migration and intermarriage strengthened community ties within First Nation communities. Torres Strait Islander peoples developed relationships with Aboriginal peoples through advocacy and capacity building with service providers in health and education.

94 R Kidd (1997) *The Way We Civilise: Aboriginal Affairs - The Untold Story*, Brisbane, University of Queensland Press, p. 220-236.

95 G Nettheim (1973) *Outlawed: Queensland's Aborigines and Islanders and the Rule of Law*, Sydney, ANZ Book Company; G Nettheim (1982) "The Queensland Acts and Human Rights", in Erik Olbrei (ed.) (1982) *Black Australians: The prospects for change*, Townsville, Student Union James Cook University, Ch. 5.

96 R Fitzgerald (1984) *From 1915 to the Early 1980s*, St. Lucia, University of Queensland Press, p512.

97 R Fitzgerald (1984) *From 1915 to the Early 1980s*, St. Lucia, University of Queensland Press, p524.

98 *The Courier Mail*, 27 May 1969.

99 *The Australian*, 2 March 1968; R Evans (2007) *A History of Queensland*. Cambridge University Press, p232-236.

100 N Sharp (1993) *Stars of Tagai: The Torres Strait Islanders*, Canberra, Aboriginal Studies Press, p. 9.

101 E K Fisk, H Duncan, and A Kehl (1974) *The Islander population in the Cairns and Townsville area*, Canberra, Department of Economics, Research School of Pacific Studies, Australian National University.

102 S Taffe (2005) *Black and White Together: FCAATSI: the Federal Council for the Advancement of Aborigines and Torres Strait Islanders, 1958-1973*, University of Queensland Press, p.219.

## New challenges

Life for First Nations peoples also changed significantly when the previous missions and reserves were legislated as DOGIT (Deed of Grant in Trust Communities) and the *Community Services Acts of 1984* gave them some autonomy, creating systems of localised governance and involving the communities in the wider Local Government realm.<sup>103</sup>

Towards the end of the twentieth century there were also calls from Torres Strait Islanders proposing a restructure within government institutions in order to improve conditions in the Torres Strait Island region. As a result, the Torres Strait Regional Authority (TSRA) was established in 1994. The TSRA leadership regarded its establishment as a transitional arrangement moving to a model of greater autonomy, particularly in relation to service delivery.<sup>104</sup> In response, the House of Representatives Standing Committee for Aboriginal and Torres Strait Islander Affairs tabled '*Torres Strait Islanders: A New Deal—A report on greater autonomy for Torres Strait Islanders*', in August 1997. Issues explored included the meaning of greater political and economic autonomy in the Torres Strait and the reality of a significant Torres Strait Islander population living on the mainland. There were two Aboriginal and Torres Strait Islander Commission (ATSIC) bodies which represented the Torres Strait Islanders specifically: the Torres Strait Islander Advisory Board and the Office of Torres Strait Islanders Affairs. These provided a voice for mainland Torres Strait Islanders which was silenced when ATSIC was abolished in bodies which represented the Torres Strait Islanders specifically: the Torres Strait Islander Advisory Board and the Office of Torres Strait Islanders Affairs. These provided a voice for mainland Torres Strait Islanders which was silenced when ATSIC was abolished in 2004.<sup>105</sup>

The Torres Strait Islander peoples also had other battles to fight. Torres Strait Islanders united again during the 1970s border dispute when Papua New Guinea attempted to change the boundaries to access sea-bed oil and other natural resources in the region. The Islanders' campaign under the slogan 'Border No Change' was successful. In December 1978, Townsville-based Torres Strait Islander, Carlemo Wacando of the Torres Strait United Party brought an action in the High Court,<sup>106</sup> challenging the legality of Queensland's 1879 Annexation.<sup>107</sup> Wacando's claim was rejected by the High Court in 1981. It did however bring the issue to the attention of the UN and raised important questions about sovereign rights as well as reinforcing the distinct identity of Torres Strait Islanders.<sup>108</sup>

In 1987, Townsville Torres Strait Islander organisation Magani Malu Kes also promoted the recognition of Torres Strait Islanders as a distinct group of First Nations peoples.<sup>109</sup> In 1988 a meeting of 400 Islanders from the region and mainland took place to discuss another expression of greater autonomy, a move for sovereignty through secession from Australia.<sup>110</sup>

## Brisbane on the world stage

In 1982 Brisbane emerged onto the world stage by hosting the Commonwealth Games. First Nations peoples saw the opportunity to conduct wider political campaigns calling for increased autonomy, recognition and land rights. This international event created both numerous challenges and opportunities for Aboriginal people to present their story to the world through demonstrations, street marches and the arts. Alarmed at these unprecedented developments shown in the international media, the Queensland Parliament, under Premier Joh Bjelke-Petersen, passed the *Commonwealth Games Act 1982* giving increased policing powers during a State of Emergency.<sup>111</sup>

The Bicentennial Protests in 1988 again saw movements to achieve social justice for First Nations peoples. The first challenge came in the form of pressure to investigate numerous deaths in custody resulting in the Royal Commission into Aboriginal Deaths in Custody by Patrick Dodson, D.J. O'Dea, Hal Wooten AC QC, L.F. Wyvill QC and Elliot Johnston QC.<sup>112</sup> Among its many recommendations, and one of the few that were implemented, was the establishment of the Council for Aboriginal Reconciliation.<sup>113</sup>

<sup>103</sup> Environmental Defender's Office website, available online at: <https://www.edo.org.au/publication/what-is-a-dogit-in-Queensland/> (accessed 20 Jan 2020); V Donovan (2002) *The Reality of a Dark History: From Contact and Conflict to Cultural Recognition*, Queensland Government, pp. 208, 233, 234, 236, 237, 249.

<sup>104</sup> J Altman et al (1996) *Towards greater autonomy for Torres Strait: Political and economic dimensions*, Centre for Aboriginal and Economic Policy Research.

<sup>105</sup> N Sharp (1993) *Stars of Tagai: The Torres Strait Islanders*, Canberra, Aboriginal Studies Press, p. 9.

<sup>106</sup> N Sharp (1993) *Stars of Tagai: The Torres Strait Islanders*, Canberra, Aboriginal Studies Press, p. 228.

<sup>107</sup> N Sharp (1993) *Stars of Tagai: The Torres Strait Islanders*, Canberra, Aboriginal Studies Press, p. 228.

<sup>108</sup> N Sharp (1993) *Stars of Tagai: The Torres Strait Islanders*, Canberra, Aboriginal Studies Press, p. 228.

<sup>109</sup> N Sharp (1993) *Stars of Tagai: The Torres Strait Islanders*, Canberra, Aboriginal Studies Press.

<sup>110</sup> N Sharp (1993) *Stars of Tagai: The Torres Strait Islanders*, Canberra, Aboriginal Studies Press.

<sup>111</sup> R Evans (2007) *A History of Queensland*. Cambridge University Press, p236.

<sup>112</sup> C Foley and I Watson (2001) *Reconciliation in Queensland, A Peoples Movement*, Keaira Press.

<sup>113</sup> C Foley and I Watson (2001) *Reconciliation in Queensland, A Peoples Movement*, Keaira Press.

## Land rights and reconciliation

In July 1992 a landmark case was heard in the High Court of Australia, which addressed the issue of Native Title, land rights and the assumption of British sovereignty on unalienated Crown land. Brought by Eddie Mabo of the Meriam peoples of the Torres Strait the Court recognised enduring cultural connection and ownership of traditional lands.<sup>114</sup> The following year the Commonwealth Government, led by Prime Minister Paul Keating, passed the *Native Title Act 1993*. The Queensland Government also passed the *Native Title Act* in 1993, ensuring Queensland law was consistent with the Commonwealth *Native Title Act 1993*. In December 1996, the *Wik Peoples v. Queensland* case was heard in the High Court.<sup>115</sup> The Wik peoples successfully appealed for recognition of Native Title on lease-hold land.<sup>116</sup> In 1998, the Queensland Government introduced umbrella legislation into parliament to deal with the issue of the Commonwealth Government's *Native Title Amendment Act 1998*.<sup>117</sup> Public opinion was irreconcilably divided on these significant cases; however, they mark the beginnings of the Australian legal system acknowledging and recognising First Peoples' rights to their Country.

Throughout the 1990s, the reconciliation movement gained momentum, with people of all backgrounds and ages participating in concerts, special events, learning circles, and educational programs.

Reconciliation movement success and wider public acceptance culminated on 4 June 2000 when between 50,000 to 70,000 people walked across Brisbane's William Jolly Bridge in support of reconciliation.<sup>118</sup>

## Conclusion

The colonisation of Australia brought destructive and enduring change for all First Nations peoples. Both First Nations peoples share a common experience of injustice through the continued domination and oppression. Despite past injustices First Nations peoples maintain their connection to Country and preserve their cultures, heritage and traditions that thrived prior to colonisation.

However, racism, prejudice and intolerance continue to impact on First Nations peoples today. It is critical to have a deeper understanding of Queensland's history from a First Nations perspective to move forward towards reconciliation. The advocacy and agitation for First Nations peoples' rights expressed in the High Court's decision on Native Title, the Mabo Decision, the repayment of stolen wages and compensation for the unjust taking of lands and waters, are often perceived as handouts and not rights upheld by the nation's highest court.<sup>119</sup>

Historical acceptance of past policies and practices during colonisation and their impact upon First Nations peoples is crucial to any agreement-making process.

Now, on the eve of the 250th anniversary of Lieutenant James Cook's unauthorised declaration of *terra nullius* in the Torres Strait, there are unprecedented opportunities to address the wider implications of his actions. Following on from the landmark Mabo Decision in 1992 to acknowledge traditional land rights, it is imperative to address this historical omission. A treaty with First Nations peoples, enables all Queenslanders a unique opportunity to share in truth-telling, face the past—with all its imperfections and injustices—and to move forward together to a unified future.

<sup>114</sup> *Mabo and others v. Queensland (No. 2)* [1992] HCA 23; (1992) 175 CLR 1 F.C. 92/014 (3 June 1992). Available online at: [http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/high\\_ct/166clr186.html?stem=0&synonyms=0&query=title+%28+mabo%22+%29](http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/high_ct/166clr186.html?stem=0&synonyms=0&query=title+%28+mabo%22+%29) (accessed 31 January 2020).

<sup>115</sup> *The Wik Peoples v The State of Queensland & Ors; The Thayorre People v The State of Queensland & Ors* [1996] HCA 40 ('Wik'), available online at: <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1996/40.html> (accessed 31 January 2020).

<sup>116</sup> R Evans (2007) *A History of Queensland*. Cambridge University Press, p 256-257; V Donovan (2002) *The Reality of a Dark History: From Contact and Conflict to Cultural Recognition*, Queensland Government, p 238-241.

<sup>117</sup> V Donovan (2002) *The Reality of a Dark History: From Contact and Conflict to Cultural Recognition*, Queensland Government, p241-242.

<sup>118</sup> M Sinnamon (2000) *People's Walk for Reconciliation* (4 June 2000), SLQ, JOL 31 May 2017 (accessed on line 21 January 2020); C Foley and I Watson (2001) *Reconciliation in Queensland, A Peoples Movement*, Keaira Press.

<sup>119</sup> 119 Australian Institute Of Aboriginal and Torres Strait Islander Studies, "Mabo Case", available online at: <http://aiatsis.gov.au/articles>, (accessed 20 January 2020); 3 June :The Mabo Decision, National Reconciliation Week May 70 3 June 2017, <http://www.reconciliation.org.au> accessed 20 January 2020; Fr F Brennan SJ AO, "Confes-sions of an Erstwhile Land Rights Advocate", *NewLawRw2*, 2006-2008). R Evans (2007) *A History of Queensland*. Cambridge University Press, p. 256; "Towards Reconcil-iation: The 1967 Referendum and Mabo" SLQ, 28 May 2019.



## 2. TREATIES AND AGREEMENT-MAKING

*"...with respect to Treaty, it's important that states and territory jurisdictions take the lead. When you consider the constitution, they are better placed to undertake that work..."*

*~The Hon Ken Wyatt~*

## What is a treaty?

In its simplest form, a treaty can be described as a negotiated instrument between two or more parties who seek to have their relationship with each other defined and formalised.

In the case of Indigenous peoples and governments, treaties have been a key mechanism to frame relationships with one another and with their lands since colonisation, including recognition of the sovereign rights of Indigenous peoples.

Treaties are traditionally thought of as agreements between nations, and until recent times most discussion around treaty in Australia was in relation to a treaty between First Nations peoples and the Australian Government.

Much critical attention has been applied to the topic of treaty in Australia, including the substance of any treaty, how it should be negotiated, and who should represent the interests of First Nations peoples.

The failure to initiate a treaty with Aboriginal people over 'Van Diemen's Land' (as Tasmania was then described) was identified in 1832 by the then Governor George Arthur as a 'fatal error'.<sup>120</sup> It has proved to be a lingering issue throughout the generations and has preoccupied the minds of First Nation peoples in the time since.

Australia's First Nations peoples do not expect that the establishment of treaties, either federally or via the states and territories, is going to instantly transform their existence. However, they do expect that treaty discussions must involve this country coming to terms with its past and its treatment of First Nations peoples and may finally provide the basis through which a just settlement for their dispossession can be reached.

New Zealand's *Treaty of Waitangi* is a foundational part of law, government and relationships in that country. Executed in 1840, it continues to hold a prominent role in the national psyche and delivers practical benefits to Maori people. Interestingly, at the time the *Treaty of Waitangi* was entered into, New Zealand was part of the colony of New South Wales. The British Crown did not accord the same respect to the First Nations peoples in Australia.

Modern treaties, such as those negotiated in Canada are a key feature of the relationships between governments and First Peoples there today. These examples demonstrate that there is much to be gained for everyone through the process of treaty-making.

A number of Australian states and territories are well on their way to striking formal agreements or treaties with First Nations peoples in their respective jurisdictions. The Commonwealth Government favours this approach rather than a national treaty. The Minister for Indigenous Australians, the Hon, Ken Wyatt AM, in his address to the National Press Club on 10 July 2019, stated:

*"...with respect to Treaty, it's important that states and territory jurisdictions take the lead. When you consider the constitution, they are better placed to undertake that work..."*

*"Treaty models are evolving with work undertaken by the Victorian and Northern Territory governments which address the aspirations of Indigenous Australians in those jurisdictions, and it's important that it resides and sits there."<sup>121</sup>*

## Different types of treaties and agreements

Treaties can take many different forms.

First Nations peoples have struck many agreements, contracts and memoranda of understanding with government, but there is not yet agreement on what elevates such agreements to the status of a treaty. Some argue that an Indigenous Land Use Agreement (ILUA) is a form of a treaty.

Legal experts Harry Hobbs and George Williams have suggested that treaties meet three criteria:

- 1** Recognition that Indigenous peoples were the original owners of the land now claimed by the State, and endured injustices as a result of the ensuing processes of colonisation
- 2** The coming together of Indigenous peoples and government through a process of negotiation and agreement
- 3** Substantive social justice outcomes for Indigenous peoples.<sup>122</sup>

The United Nations Declaration on the Rights of Indigenous Peoples, adopted by the UN General Assembly in 2007, provides an important framework and seeks to ensure that future treaties, in Australia and abroad are based on this framework.

The following section describes types of agreements that are commonly struck between First Nations peoples and non-Indigenous people. It highlights some processes currently underway, or which have recently been negotiated between First Nations peoples and government.

Whilst these frameworks provide an important foundation for the consideration of what a path to treaty in Queensland might look like, the Treaty Working Group does not suggest that any of them are sufficient by themselves, nor do they directly represent what the Treaty Working Group heard during the community engagement process.

In addition, there are international examples that can provide further understanding and knowledge, such as the recent modern treaties made in British Columbia,<sup>123</sup> as well as the historical New Zealand *Treaty of Waitangi*.

### Memorandum of Understanding

A Memorandum of Understanding (MoU) is generally a non-binding agreement that sets out the wishes and aspirations of two parties. The *Barunga Agreement* is one such MoU that was struck in 2018 by the Northern Territory Government and four Aboriginal Land Councils.<sup>124</sup>

The Agreement commits the parties to engage with Aboriginal Territorians about their aspirations for treaty,<sup>125</sup> positioning itself alongside the call for a national treaty process that was articulated in the historic *Barunga Statement* of 1988.

The MoU provides the impetus for the recently appointed Treaty Commissioner, Professor Mick Dodson AO, and Deputy Commissioner Ursula Raymond to undertake work to inform the development of a treaty framework. The process is not legally binding, but rather relies on government honouring its provisions.

### Services agreement

The South Australian (SA) Government announced in December 2016, that it would begin conversations about treaty with First Nation peoples in that state. To facilitate this process, a Treaty Commissioner was appointed to engage with communities and in September 2017, three nations—the Adnyamathanha, Ngarrindjeri and Narungga—were invited to commence negotiations.

In February 2018, the SA Government signed the *Buthera Agreement* with the Narungga Nation Aboriginal Corporation (NNAC), a contract that sought to facilitate sustainable economic outcomes, including those that promoted the broader social and cultural well-being of the Narungga

peoples.<sup>126</sup> As part of this agreement, the SA Government also committed to funding the NNAC to build its capacity to drive such change, spanning the areas of justice, housing, health, child protection and education.<sup>127</sup>

Whilst not a treaty in itself, the *Buthera Agreement* sought to provide the enabling conditions for such a negotiation in the future via a legislative structure.<sup>128</sup> Discussions regarding treaty in SA stalled shortly after the signing of this agreement, with the incoming government declaring its preference for ‘practical outcomes’ over the ‘expensive gestures’ posed by treaties.<sup>129</sup>

The SA Government has since implemented a number of elements of the *Buthera Agreement* into the Aboriginal Affairs Action Plan of 2019–20,<sup>130</sup> and the agreement remains one of the most significant steps towards achieving a state-based treaty process.

### Indigenous Land Use Agreement

An Indigenous Land Use Agreement (ILUA) is a form of agreement for the use of particular land in a variety of contexts. An ILUA can be over an area where native title has or has not been determined, be part of a native title determination, or be completely separate from a native title claim.

The National Native Title Tribunal describes an Indigenous Land Use Agreement as “a voluntary agreement between a native title group and others about the use of land and waters. These agreements allow people to negotiate flexible, pragmatic agreements to suit their particular circumstances.”<sup>131</sup>

An ILUA can cover matters such as:

- Future development
- Access to particular areas
- Compensation
- Employment and economic development
- Cultural heritage
- Mining.

In Queensland, there are 835 Indigenous Land Use Agreements.<sup>132</sup> Of these, 620 are Area Agreements and 215 are Body Corporate Agreements.

<sup>123</sup> For example, see *The University of British Columbia library on Aboriginal Treaties*, available online at: <http://guides.library.ubc.ca/c.php?g=699374&p=4966282> (accessed 13 January 2020).

<sup>124</sup> Northern Territory Government Website, *Land Council Contacts*, available online at: <https://nt.gov.au/property/land/aboriginal-land-management/aboriginal-land-and-permits/land-council-roles-and-contacts> (accessed 29 December 2019).

<sup>125</sup> *Barunga Agreement, The Aboriginal Land Councils-Northern Territory, signed 8 June 2018 (Memorandum of Understanding)*, available online at: [https://dcm.nt.gov.au/\\_data/assets/pdf\\_file/0003/514272/barunga-muo-treaty.pdf](https://dcm.nt.gov.au/_data/assets/pdf_file/0003/514272/barunga-muo-treaty.pdf), (accessed 22 December 2019).

<sup>126</sup> *The Buthera Agreement, sE, 2.3*, available online at: [https://www.dpc.sa.gov.au/\\_data/assets/pdf\\_file/0006/118554/Buthera-Agreement.pdf](https://www.dpc.sa.gov.au/_data/assets/pdf_file/0006/118554/Buthera-Agreement.pdf), (accessed 22 December 2019).

<sup>127</sup> *The Buthera Agreement, s8.1*, available online at: [https://www.dpc.sa.gov.au/\\_data/assets/pdf\\_file/0006/118554/Buthera-Agreement.pdf](https://www.dpc.sa.gov.au/_data/assets/pdf_file/0006/118554/Buthera-Agreement.pdf), (accessed 22 December 2019).

<sup>128</sup> *The Buthera Agreement, s3*, available online at: [https://www.dpc.sa.gov.au/\\_data/assets/pdf\\_file/0006/118554/Buthera-Agreement.pdf](https://www.dpc.sa.gov.au/_data/assets/pdf_file/0006/118554/Buthera-Agreement.pdf), (accessed 22 December 2019).

<sup>129</sup> *The Age website, ‘Nation ripe for talks on an Indigenous treaty’, 14 June 2018*, available online at: <https://www.theage.com.au/national/nation-ripe-for-talks-on-an-indigenous-treaty-20180614-p4zlgw.html>, (accessed 27 December 2019).

<sup>130</sup> Department of Premier and Cabinet SA Website, *Aboriginal Affairs and Reconciliation: Buthera Agreement*, available online at: <https://www.dpc.sa.gov.au/responsibilities/aboriginal-affairs-and-reconciliation/aboriginal-land-and-business/buthera-agreement> (accessed 28 December 2019).

<sup>131</sup> National Native Title Tribunal, *Indigenous Land Use Agreements*, available online at: <http://www.nntt.gov.au/ILUAs/Pages/default.aspx>, (accessed 29 December 2019).

<sup>132</sup> National Native Title Tribunal, *Search Register of Indigenous Land Use Agreements*, available online at: <http://www.nntt.gov.au/searchRegApps/NativeTitleRegisters/Pages/Search-Register-of-Indigenous-Land-Use-Agreements.aspx> (accessed 29 December 2019).

The *Native Title Act 1993* (Cth) sets out requirements for Area Agreements regarding subject matter, area covered, parties, and legal consideration and conditions.

A Body Corporate Agreement covers the same requirements as for an Area Agreement but is usually only made if there is one or more Registered Native Title Body Corporates (RNTBCs) over the whole of the proposed agreement area; RNTBCs are generally created as part of a native title determination.

In Queensland, there are 143 native title determinations.<sup>133</sup> This means there are 143 places in Queensland where native title holders have been identified and determined by the Federal Court of Australia.

### **The Noongar Agreement**

On 19 December 2019, the Full Federal Court upheld the registration of the six Indigenous Land Use Agreements (ILUAs), over 200,000 square kilometres of land in Western Australia, which collectively comprise the *Noongar Agreement*.<sup>134</sup> The *Noongar Agreement* is a settlement between the Western Australian Government and 30,000 Noongar people, regarding the forfeiture of all native title rights and interests in this land in exchange for a 'comprehensive settlement package'.<sup>135</sup>

The settlement totals \$1.3 billion and also includes the establishment and resourcing of regional governance institutes, the transfer of 320,000 hectares of Crown land, \$50 million to the Noongar Boodja Trust, two heritage protection agreements and access to parcels of unallocated Crown land.

Unlike other ILUAs, the nature and extent of this agreement goes beyond land dealings to also recognise the Noongar people as a distinct polity with the right to be self-governing. It is the provision for self-governance, though somewhat limited, which is a distinguishing feature of this settlement alongside approximately 1,300 other agreements that are operating across the country.<sup>136</sup>

Whilst the *Noongar Agreement* has not yet been implemented, it represents the extensive opportunities that may be possible for First Nations peoples under current or future Indigenous Land Use Agreements. Although it is claimed to be Australia's first treaty, it does not represent the Treaty Working Groups' vision of treaties in Queensland in which self-governing and power sharing should be the norm.

## **Treaties in Australia**

Although there has been a resistance to the word 'treaty' on the part of governments, particularly insofar as they concern First Nations peoples, the same cannot be said for agreements that exist between the Australian Government and other parties.

Australia is party to many treaties with foreign governments and entities, and has signed and ratified numerous treaties such as the International Convention on the Elimination of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, all of which are reflected in domestic laws of Australia.

Most recently, Australia signed the comprehensive Trans-Pacific Partnership Agreement with a number of other nations regarding trade.<sup>137</sup>

Australia is no stranger to treaties, but it has been particularly cautious about broaching the topic in a manner that formally engages with the truth of Australia's past, including recognising the sovereign rights of Australia's First Nations peoples.

### **The Torres Strait Treaty**

Although it may not be widely known, there is a treaty between the Australian and Papua New Guinea Governments that governs the common border area between the two nation states.<sup>138</sup>

The *Torres Strait Treaty* was signed in 1978 and came into force in February 1985. The treaty defines the maritime boundaries between the two nation states, such as the Seabed Jurisdiction Line and the Fisheries Jurisdiction Line. Australia has rights to all things on or below the seabed or all fish swimming south of this line, and Papua New Guinea has the same rights to the north. The treaty sets out protections for the activities and movement that occurs between the inhabitants of the Torres Strait Protected Zone. Importantly the treaty allowed for the continuation of traditional movement practices between Papuans and Torres Strait Islanders:

*"During the negotiations, the islanders made very clear to the Australian Government their concern that traditional practices and freedom of movement be allowed to continue... At the time of the negotiations, it was apparent that the use of the Strait by islanders and coastal Papuans involved considerable movement of both groups through the area."<sup>139</sup>*

<sup>133</sup> National Native Title Tribunal, *Search Register of Native Title Claims*, available online at: <http://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/default.aspx> (accessed 29 December 2019).

<sup>134</sup> *Mc Glade v South West Aboriginal Land & Sea Aboriginal Corporation (No 2)* [2019] FCAF 238, available online at: <https://www.judgments.fedcourt.gov.au/judgments/judgments/fca/full/2019/2019fcafco238> (accessed 1 January 2020).

<sup>135</sup> Western Australia, *Parliamentary Debates, Legislative Assembly*, 14 October 2015, 7313 (Colin Barnett, Premier).

<sup>136</sup> H Hobbs and G Williams (2018) *The Noongar Settlement: Australia's First Treaty*, Sydney Law Review 5-640(1), citing S Brennan (2005) *Treaty*, Federation Press, pg. 3.

<sup>137</sup> Prime Minister of Australia website, *Australia ratifies the TPP-11*, media release, 31 October 2018, available online at: <https://www.pm.gov.au/media/australia-ratifies-tpp-11>, (accessed 1 January 2020).

<sup>138</sup> Australian Government, Department of Foreign Affairs and Trade Website, *Torres Strait Treaty*, available online at: <https://dfat.gov.au/geo/torres-strait/Pages/the-tor-res-strait-treaty.aspx>, (accessed 22 December 2019).

<sup>139</sup> H Burmester (1982) *The Torres Strait Treaty: Ocean Boundary Delimitation by Agreement*, *The American Journal of International Law*, vol. 76, p. 330.

This treaty was discussed throughout the Path to Treaty process during November 2019. Participants drew on their knowledge and experiences regarding this agreement in sharing their views on future treaty processes.

One participant in particular identified what he saw as the general lack of involvement from Torres Strait Islander peoples in the design, development and implementation of the *Torres Strait Treaty* and that any outcomes sought for future processes would need to be very different.

### The Batman Treaty

Perhaps one of the most widely known historical treaties in Australia is the *Batman Treaty* of 1835, made between John Batman and the Wurundjeri peoples for the rental of 600,000 acres of land near current-day Melbourne. This treaty was one of the first recorded acknowledgements of the property rights of First Nations peoples.<sup>140</sup> The agreement was nonetheless voided by Governor Bourke later in the same year. The Governor's Proclamation of 1835 details the view of the new government regarding the formation of any kind of agreements with the 'natives', perpetuating the myth of *terra nullius*:

*"Whereas, it has been represented to me that divers of His Majesty's Subjects have taken possession of vacant Lands of the Crown, within the limits of this Colony, under the pretence of a treaty, bargain or contract, for the purchase thereof, with the Aboriginal Natives; Now therefore, I, the Governor, in virtue and in exercise of the power and authority in me vested, do hereby proclaim and notify to all His Majesty's Subjects, and others whom it may concern, that every such treaty, bargain, and contract with the Aboriginal Natives, as aforesaid, for the possession, title, or claim to any Lands... is void and of no effect against the rights of the Crown; and that all Persons who shall be found in possession of any such Lands... without the license or authority... will be considered trespassers, and liable to be dealt with in a like manner as other intruders upon the vacant Lands of the Crown."*<sup>141</sup>

Courts upheld the view that Batman had no right to enter into a treaty with the Wurundjeri, as the 'treaty' dealt with lands that had already been acquired by the Crown.<sup>142</sup>

### Why a treaty?

There are many benefits that may be achieved through a Queensland treaty or treaties process. Many of these are discussed throughout this report, however broadly speaking these include:

- the opportunity for all people in Queensland to participate in a process that promotes healing, justice and reconciliation and addresses intergenerational trauma
- a demonstration of our maturity as a state to acknowledge the past and agree on a path forward for the future
- a vehicle to better realise the human rights of First Nations peoples in Queensland, including respect for cultural authority and equity in benefits and power sharing.

### Addressing unfinished business

For many First Nations peoples, the term 'unfinished business' is inextricably linked to the past and particularly to unresolved grievances that are tied to the process of colonisation.

As a term without a singular definition, it has come to mean different things to different First Nations peoples. 'Unfinished business', was described by the Council for Aboriginal Reconciliation as '*any issue ...that is an impediment to achieving reconciliation*'.<sup>143</sup>

At the core of this unresolved issue is the act dispossession of First Nation peoples itself, which was done without consent, without compensation and without a treaty.

Inevitably, variances will exist in the calls for treaty between First Nation peoples. As Victorian Treaty Commissioner, Jill Gallagher AO has said:

*"We don't yet know what a treaty may include, or even if it's [going to be] one treaty or several. This will be the first time any government in Australia has acknowledged the true injustice of dispossession. The possibilities are huge. It could be truth-telling about this nation's history. It could be reparation and a clearer path to financial sustainability. It could be local language and culture hubs... the possibilities when you think about them are incredible... Everything is on the table [but], we need to get to the table first."*<sup>144</sup>

Just as there may be jurisdictional differences, there will be individual differences too. As current NT Treaty Commissioner, Professor Mick Dodson has said:

*"An Indigenous person who is a member of the stolen generations may view the key outstanding issues in a treaty process in a quite different way to someone who has had a relative die in custody, or someone who has had their native title rights extinguished."*<sup>145</sup>

<sup>140</sup> *Recognising Aboriginal and Torres Strait Islander peoples in the Constitution: Report of the Expert Panel, January 2012, available online at <https://www.referendum-council.org.au/resource/recognising-aboriginal-and-torres-strait-islander-peoples-in-the-constitution-report-of-the-expert-panel.html>, (accessed 10 January 2020).*

<sup>141</sup> *Governor Bourke's Proclamation 1835, Museum of Australian Democracy, available online at: <https://www.foundingdocs.gov.au/item-did-42.html>, (accessed 10 January 2020).*

<sup>142</sup> *R v Bonjon [1841] (NSWSC 16 September 1841, (1998) Australian Indigenous Law Reporter Vol 3 No 3) 92; also available online at: <http://www.austlii.edu.au/au/other/NSWSupC/1841/92.html> (accessed 31 January 2020).*

<sup>143</sup> *R v Bonjon [1841] (NSWSC 16 September 1841, (1998) Australian Indigenous Law Reporter Vol 3 No 3) 92.*

<sup>144</sup> *Federation of Victorian Traditional Owners website, 'Q & A interview with Victoria's Treaty Advancement Commissioner Jill Gallagher,' 3 September 2018, available online at: <https://www.fvtoc.com.au/blog/2018/jill-gallagher>, (accessed 4 January 2020).*

<sup>145</sup> *M Dodson (2003) A shadow across our relationships, Treaty: Let's Get It Right!, Canberra, Aboriginal Studies Press, pg.30.*

Despite these differences, commonalities exist at the crux of First Nations peoples aspirations for treaty, such as the need for a treaty to address:

- the lack of compensation for dispossession
- acknowledgement of Indigenous sovereignty
- provisions for greater recognition of rights, self-governance and representation and
- full disclosure regarding Australian history through a process of truth-telling.

Australian governments have been immovable in their refusal to sit down and discuss a matter that is at the heart of this grievance: the unjust and unlawful dispossession of the lands and waters of First Nations peoples and their resources, and their unyielding sovereignty.

This reluctance has also come at a cost to the relationship between First Nations peoples and non-Indigenous peoples; addressing the unfinished business of treaty will have positive and important consequences for a new, truthful and just relationship.

The development of a treaty, whether on a state or national level, is seen as a part of the equation of ‘unfinished business’ that has been missing for too long.

### **Acknowledging the impacts of colonisation**

Colonisation has had, and continues to have, a devastating impact on First Nations peoples, and part of the unfinished business of this nation is for a treaty to address this fact. As Mick Dodson has said:

*“The need for a treaty today is based on the reasonable basis that Aboriginal and Torres Strait Islander societies have been injured and harmed throughout the colonisation process and just recompense is owed.”<sup>146</sup>*

Beyond reparations, however, is the need for a treaty to address the issue of intergenerational trauma, which has been transferred across generations of First Nations peoples since colonisation and led to a cycle of worsening social, emotional and cultural consequences.<sup>147</sup>

The extent of colonisation over decades, in its many brutal, violent and insidious forms, across the state has left a deep gaping wound in the hearts, minds, spirits, and physiology of generations of First Nations people and their families. The cost of these devastating impacts on First Nations peoples and their cultures is immeasurable.

These memories and experiences are very real and raw and have afflicted generations of families. People still carry in their psyche this historical trauma, and it can be characterised into three major themes that cover the nature of the trauma that occurred over many generations and continue to be experienced. These are:

- the extreme sense of powerlessness and loss of control
- the profound sense of loss, grief and disconnection and
- the overwhelming sense of distress and helplessness.

First Nations peoples have felt the full brunt of colonisation, in some cases experiencing these traumas simultaneously and over prolonged periods of time. The sense of degradation and humiliation at being treated as less than human with no regard for the most basic of human rights, remains a source of distress for many families. As the ‘Working Together Report on Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice’ outlines:

*“Colonial control was exerted through the clearing and theft of land with massacres and dispossession of clan groups; race-based legislation; slave labour; having an ‘apartheid’ system effectively excluding and alienating First Nations peoples from services, society and resources, denial of wages and economic development; imposition of a foreign legal system; and incarceration.*

*The sheer loss of life would have had a profound impact on families and communities, but also has to be considered in the context of other losses. All forms of loss were experienced including the loss of land, culture, heritage, ancestry, identity, language and children.*

*The profound sense of these losses results in feelings of disconnection and isolation as well as multigenerational grief and existential despair. Currently it is known that the loss of affectional bonds, especially in childhood can have significant adverse effects on child development and across the life course, leaving children and adults with mental health problems, poor coping mechanisms, difficulty in forming relationships and very likely to contribute to self-medication and substance misuse.”<sup>148</sup>*

It is here in a process of negotiation that the intergenerational and compounding contemporary trauma of First Nations peoples may be addressed, through a process of truth-telling, the provision of trauma-informed supports, the acknowledgement of the true history of colonisation and the negotiation of treaty or treaties which provide for real self-determination, self-governance and power sharing.

Given the particularly brutal and violent nature of Queensland’s historic policies towards First Nations peoples, it is asserted that a process that provides a comprehensive means of acknowledging and addressing past harms will be of significant benefit to all involved.

By not addressing the ‘unfinished business’, successive Australian and state and territory governments have helped to create an intractable problem that has kept First Nations peoples in a holding pattern of significant disempowerment and high psychological distress across the life course of individuals, families and communities.

<sup>146</sup> M Dodson (2003) *A shadow across our relationships, Treaty: Let’s Get It Right!*, Canberra, Aboriginal Studies Press, pg.33.

<sup>147</sup> Healing Foundation (2018) *Submission to Closing the Gap Refresh*, pg.7 (unpublished).

<sup>148</sup> P Dudgeon, H Milroy and R Walker (2014) “Community Life and Development Programs: Pathways to Healing” in P Dudgeon, H Milroy and R Walker (eds) (2014) *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice*, 2nd Edition, pg. 421 – 422. Available online at: <https://www.tele-thonkids.org.au/globalassets/media/documents/aboriginal-health/working-together-second-edition/working-together-aboriginal-and-wellbeing-2014.pdf>, (accessed 10 January 2020).

The intergenerational transmission of trauma has been described thus:

*“The trans-generational effects of trauma occur via a variety of mechanisms including the impact on the attachment relationship with caregivers; the impact on parenting and family functioning; the association with parental physical and mental illness; disconnection and alienation from extended family, culture and society. These effects are exacerbated by exposure to continuing high levels of stress and trauma including multiple bereavements and other losses, the process of vicarious traumatising where children witness the on-going effects of the original trauma, which a parent or other family member has experienced. Even where children are protected from the traumatic stories of their ancestors, the effects of past traumas still impact on children in the form of ill health, family dysfunction, community violence, psychological morbidity and early mortality.”<sup>149</sup>*

It was interesting to see that, despite many disappointments and broken promises relating to righting the wrongs inflicted on generations of First Nations peoples, First Nations peoples are still willing to enter into a dialogue on unfinished business. The Treaty Working Group acknowledges the resilience, compassion and goodwill expressed by many participants throughout this process.

### Addressing sovereignty

The recognition of First Nations peoples' sovereignty is perhaps the single biggest piece of unfinished business that Australia as a nation has yet to address. Whilst First Nations peoples hold various views regarding the nature and extent of their sovereignty, many are adamant that it is an inherent right that has never been ceded and remains intact more than 230 years after colonisation.

As peoples with their own distinct laws and customs, First Nations peoples have exercised and maintained sovereignty over their lands since time immemorial. For some, this could mean the desire to exercise complete authority to the exclusion of all others or as a means through which other legal rights such as self-governance and self-determination may be realised.<sup>150</sup> For others, the meaning may be less legal and more spiritual, or about the right to make decisions across the political, social and economic aspects of their lives.<sup>151</sup>

The issue of First Nations peoples' sovereignty within the context of treaty-making is a contested one, particularly where Australian courts have been reluctant to acknowledge any other forms of sovereignty which may threaten the territorial integrity of the Australian nation state. Numerous cases have all upheld the notion that Australian courts cannot rule on matters of First Nations' sovereignty, reinforcing the prevailing view that sovereignty is both singular and indivisible.<sup>152</sup> While some legal decisions have implicitly acknowledged the prior sovereignty of First Nations peoples, the courts have ruled that any Indigenous sovereignty ceased upon the assertion of sovereignty by the British Crown in 1788.<sup>153</sup>

Australian governments have previously rejected calls for treaty on the basis that there is only one recognisable sovereign entity and as treaties are only made between sovereign nations, such an agreement with First Nations peoples would be impossible. Former Prime Minister John Howard proclaimed: *'A nation does not make a treaty with itself.'*<sup>154</sup>

It has been suggested that recognition of First Nations peoples' sovereignty can be achieved in a way that does not fracture the skeleton of the common law as envisaged in the 1992 Mabo (No 2) decision.<sup>155</sup> However, the view of the Treaty Working Group is that it is likely that Australian courts and governments will seek to use the most advantageous definition of First Nations sovereignty for the purposes of maintaining legal and judicial authority.

### Reconciliation

Reconciliation is a term frequently cited throughout the Indigenous Affairs landscape, particularly in attempting to address the trauma of the past with the day-to-day lives of First Nations peoples and their relationship with the broader non-Indigenous population. Since its introduction, there have been various iterations of 'reconciliation' that have existed throughout the years, whether through the eyes of the Council for Aboriginal Reconciliation, which culminated in the famous Bridge Walk of 2000, calls for an Apology to the Stolen Generations, or the policies of 'practical' reconciliation which have favoured tangible approaches above constitutional reform or treaties to address notions of Indigenous self-determination.

- <sup>149</sup> Atkinson, J Nelson, R Brooks, C Atkinson and K Ryan (2014) "Addressing Individual and Community Transgenerational Trauma," in P Dudgeon, H Milroy and R Walker (eds) *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice*, pg 294. Available online at: <https://www.tele-thonkids.org.au/globalassets/media/documents/aboriginal-health/working-together-second-edition/working-together-aboriginal-and-wellbeing-2014.pdf> (accessed 14 January 2020).
- <sup>150</sup> S Brennan, B Gunn and G Williams (2004) *Sovereignty and its relevance to treaty making between Indigenous Peoples and Australian Governments*, Sydney Law Review, vol 26: p307
- <sup>151</sup> S Brennan, B Gunn and G Williams (2004) *Sovereignty and its relevance to treaty making between Indigenous Peoples and Australian Governments*, Sydney Law Review, vol 26: p330.
- <sup>152</sup> See for example *R v Wedge and Coe v Commonwealth*, in L Behrendt, C Cunneen, T Libesman and Watson (2019) *Aboriginal and Torres Strait Islander Legal Relations*, 2nd ed, Oxford University Press, 18-19.
- <sup>153</sup> *Members of the Yorta Yorta Aboriginal Community v Victoria* [2002] HCA 58, available online at <http://www7.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2002/58.html> (accessed 31 January 2020).
- <sup>154</sup> Prime Minister John Howard, 29 May 2000, Interview with John Laws, 2UE Radio, available online at: <https://pmtranscripts.pmc.gov.au/release/transcript-22788> (accessed 10 January 2020).
- <sup>155</sup> *Mabo and others v. Queensland (No. 2)* [1992] HCA 23; (1992) 175 CLR 1 F.C. 92/014 (3 June 1992) Available online at: [http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/high\\_ct/166clr186.html?stem=0&synonyms=0&query=title+%28+mabo%29](http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/high_ct/166clr186.html?stem=0&synonyms=0&query=title+%28+mabo%29) (accessed 31 January 2020).

Reconciling the relationship between the Queensland Government and the First Nations peoples of Queensland lies at the heart of the Path to Treaty process. There is an opportunity to encourage all Queenslanders to realise the immeasurable benefit this process can bring to Queensland and Australia. Deputy Premier, the Honourable Jackie Trad, in her introduction to the community conversations said:

*“The Queensland Government is committed to reframing the relationship with First Nations Queenslanders and this conversation about treaty is one of the ways that we are meeting this commitment...”*

*This conversation will set the foundation for a new and just relationship. One that acknowledges our state’s ancient history, our shared history and lights a path for our shared future.”*

Reconciliation Australia’s *Australian Reconciliation Barometer* research shows that about a third of Australians do not know or accept some fundamental aspects of our shared history, including the occurrence of mass killings, incarceration, forced removal from land and restriction of movement.<sup>156</sup>

In this regard, the ongoing work by The Healing Foundation has outlined the need for truth-telling to address the trauma and racism faced by First Nations peoples.<sup>157</sup>

Some Queenslanders may not readily understand current efforts towards progressing a treaty with First Nations peoples in Queensland. Those who are ideologically opposed to First Nations peoples’ rights to self-determination being realised, are tactfully able to appeal to false notions of ‘special treatment’ whenever they do not support what is being proposed. This was clearly seen with the amendments to the *Native Title Act 1993* (Cth) following the High Court’s *Wik* decision in 1996<sup>158</sup> and then with the quashing of the aspirations contained in the 2017 *Uluru Statement from the Heart*. In these instances, the words ‘bucket loads of extinguishment’ and ‘third chamber’ rang loudly in the ears of non-Indigenous peoples and were used to engage some in a false sense of fear about what greater rights for First Nations peoples might mean for them.

People who have not been directly affected by past policies of colonisation and the ensuing trauma and disadvantage may feel that all the reports, resources and apologies represent reasonable progress towards reconciliation.

Unlike individual schemas, which are rooted in specific historical Acts or policies, a broad-ranging endeavour such as treaty-making, can facilitate a comprehensive process of truth-telling and settlement for the entire state of Queensland. This is the ultimate act of realising unfinished business, an opportunity to finally acknowledge and address all of the acts of the past and commit to a process that frames the future relationship between First Nations peoples and the non-Indigenous peoples of Queensland. The Treaty Working Group accords with the view expressed by many participants that true reconciliation without a treaty is not possible.

Some First Nations peoples who attended the public forums have said ‘conciliation’ rather than ‘reconciliation’ is the more appropriate term.

*“If we say we will have ‘truth yarns’ let’s begin with there was never a relationship with Indigenous and non-Indigenous peoples of this country. What are we reconciling? We need to be honest and work on ‘conciliation’. Let’s be honest and use the correct word please.”<sup>159</sup>*

*“All for Treaty and telling the truth. My sticking point is the word reconciliation. I want to know why that is there... So why are we using the word reconcile when it [the relationship between First Nation peoples and the rest of the population] has never been together in the first place.”<sup>160</sup>*

Former UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, has likened the United Nations Declaration on the Rights of Indigenous Peoples to an instrument of conciliation for past wrongs:

*“It is perhaps best to understand the Declaration and the right of self-determination it affirms as instruments of reconciliation. Properly understood, self-determination is an animating force for efforts toward reconciliation—or, perhaps, more accurately, conciliation—with peoples that have suffered oppression at the hands of others. Self-determination requires confronting and reversing the legacies of empire, discrimination and cultural suffocation. It does not do so to condone vengefulness or spite for past evils, or to foster divisiveness but rather to build a social and political order based on relations of mutual understanding and respect. That is what the right of self-determination of indigenous peoples, and all other peoples, is about.”<sup>161</sup>*

Regardless of which term is more appropriate, there can be no doubt that a process that formally recognises the unique place of First Nations peoples, acknowledges the history of their dispossession and disempowerment and attempts to address that through a treaty, will go a significant way to improving the relationship with non-Indigenous peoples.

<sup>156</sup> *“It is perhaps best to understand the Declaration and the right of self-determination it affirms as instruments of reconciliation. Properly understood, self-determination is an animating force for efforts toward reconciliation - or, perhaps, more accurately, conciliation - with peoples that have suffered oppression at the hands of others. Self-determination requires confronting and reversing the legacies of empire, discrimination and cultural suffocation. It does not do so to condone vengefulness or spite for past evils, or to foster divisiveness but rather to build a social and political order based on relations of mutual understanding and respect. That is what the right of self-determination of indigenous peoples, and all other peoples, is about.”<sup>161</sup>*

<sup>157</sup> The Healing Foundation, *Truth-telling Symposium Report*, 5-6 October 2018, available online at <https://www.reconciliation.org.au/wp-content/uploads/2019/02/truth-telling-symposium-report1.pdf>, (accessed 14 January 2020).

<sup>158</sup> *The Wik Peoples v The State of Queensland & Ors; The Thayorre People v The State of Queensland & Ors* [1996] HCA 40 (*Wik*), available online at: <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1996/40.html> (accessed 31 January 2020).

<sup>159</sup> Brisbane, November 2019.

<sup>160</sup> Ipswich, November 2019.

<sup>161</sup> Anaya (2015) cited in *Truth and Reconciliation Commission of Canada, Honouring the truth, reconciling for the future: summary of the final report of the Truth and Reconciliation Commission of Canada*, p188-189.



### 3. THE PATH TO TREATY PROCESS

*"The Path to Treaty process allows us to move towards a shared future, where the rights of Aboriginal and Torres Strait Islander Queenslanders are valued and embraced."*

*~Eminent Panel Co-Chair Dr Jackie Huggins~*

## The Eminent Panel

On 14 July 2019, Queensland's Deputy Premier, Treasurer and Minister for Aboriginal and Torres Strait Islander Partnerships, the Honourable Jackie Trad, announced the establishment of an Eminent Panel to engage with Queenslanders on the path forward for treaty. The Deputy Premier stated that this represented an important opportunity to '*lead the conversation about genuine agreement, about reconciliation and self-determination.*'<sup>162</sup>

The Eminent Panel's Terms of Reference (see Appendix A) provide for it to be the public face throughout the Path to Treaty process, to provide advice to the Queensland Government about best possible options and to oversee the work of the Treaty Working Group.

The Terms of Reference also require the Eminent Panel to provide a report to the Queensland Government on the findings from the statewide engagement process.

The Eminent Panel is made up of a non-partisan group of First Nations people and non-Indigenous Queenslanders, including:

- Dr Jackie Huggins AM (Co-Chair)
- Professor the Hon Michael Lavarch AO (Co-Chair)
- Ms Josephine Bourne
- Hon Dame Quentin Bryce AD CVO
- Mr Dan Crowley
- Mr Mick Gooda
- Mr Kerry O'Brien.

Members of the Eminent Panel met throughout 2019 and attended a number of community engagements alongside the Treaty Working Group. The Path to Treaty team within the Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP) provided secretariat support.

## The Treaty Working Group

The Treaty Working Group consists of 10 members, eight of whom are First Nations people and two of whom are non-Indigenous Queenslanders. The group is independent of government and its role has been to lead conversations about treaty across the state. The Treaty Working Group's role also included providing advice about building broader community support and submitting a report back to the Minister, via the Eminent Panel, that outlined findings, next steps and timing. The Terms of Reference for the Treaty Working Group are attached at Appendix B.

Members of the Treaty Working Group are:

- Dr Jackie Huggins AM (Co-Chair)
- Mr Mick Gooda (Co-Chair)
- Mr Kenny Bedford
- Ms Cheryl Buchanan
- Mr Leon Filewood

- Ms Charmaine Foley
- Mr Shane Hoffman
- Ms Elsie Seriat
- Ms Sandi Taylor
- Ms Kate Tully.

Members of the Treaty Working Group attended engagements around the state, as detailed in the following page.

## The engagement process

On the 13th of September 2019, the 12th anniversary of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the Queensland Government released the *Path to Treaty in Queensland Consultation Paper*. The paper acknowledged the historic nature of the process, being the first time that a state-wide conversation on the issue of treaty had taken place in Queensland and sets out the multi-layered nature of the community engagement process that was to follow.<sup>163</sup>

The consultation paper identified nine key questions:

1. What does treaty mean to you?
2. Who needs to be involved in the Path to Treaty journey?
3. What would you like a treaty to achieve in Queensland?
4. What would you like to see included in a treaty in Queensland?
5. What needs to be done to support truth-telling as part of this Path to Treaty?
6. Are there any elements from treaty reforms in other states, territories or countries that you think could work in Queensland?
7. What are the key issues we need to consider?
8. What are your priorities for the next steps for the Path to Treaty in Queensland?
9. How would you like to keep the conversation going about the Path to Treaty?

The community forums focused on the first five questions, which were intended to offer a starting point for the conversations. The subsequent four questions were dealt with through the written submission process and stakeholder meetings with the Treaty Working Group and Eminent Panel.

Copies of the consultation paper were made available to participants at the community forums, alongside other material on treaty and the Path to Treaty process. Overall, approximately 4000 copies of the consultation paper were distributed since September 2019 and the online document was downloaded 909 times via the DATSIP website.

Other opportunities to provide input included written submissions, completion of an online survey and the freecall 13 QGOV number.

<sup>162</sup> Elks (2019) 'Queensland announces a path to treaty with state's indigenous people', *The Australian* 14 July 2019, available online at: <https://www.theaustralian.com.au/nation/politics/queensland-announces-a-path-to-a-treaty-with-the-states-indigenous-people/news-story/foe544bdf342e35d58a559c59149073e> (accessed 21 January 2020).

<sup>163</sup> The Hon. J. Trad, Deputy Premier (2019) "Queensland voices guide Path to Treaty", *Media statement*, 13 September 2019, available online at: <http://statements.qld.gov.au/Statement/2019/9/13/queensland-voices-guide-path-to-treaty> (accessed 22 December 2019).

## Face-to-face engagements

Treaty Working Group members, at times accompanied by members of the Eminent Panel, met with more than 1,000 First Nations peoples and non-Indigenous Queenslanders throughout the two-month engagement process.

Community conversations were broadly advertised for registration on the DATSIP and 'Eventbrite' websites, as well as online, on Facebook, in print media and radio, media releases and through DATSIP's regional contact lists in order to encourage participation from the local community. Face-to-face engagements took place in 24 locations across the state.

Barcaldine	Kowanyama
Birdsville	Logan
Brisbane	Mackay
Bundaberg	Mitchell
Caboolture	Mount Isa
Cairns	Rockhampton
Charleville	Roma
Cherbourg	Thursday Island
Coen	Toowoomba
Cunnamulla	Townsville
Gold Coast	Weipa
Ipswich	Woorabinda

Engagements were planned in a number of other centres, but these had to be cancelled due to Sorry Business. Less formalised engagements also occurred in a number of locations, including Bamaga, Kingaroy, Old Mapoon and Napranum.

Typically, engagements occurred across two days in each community, with Day 1 being set aside for meetings with identified stakeholders and Day 2 open for engagement with the broader community.

The Day 1 meetings were pre-arranged in each location with key stakeholders, such as Traditional Owners, local organisations and groups such as universities that had requested further information. These meetings were often arranged with the assistance of the regional DATSIP offices and provided a good opportunity to identify key issues in the area, including improving participation and awareness at the open community forums on Day 2.

The Day 2 community engagement sessions were open to the broader public, with the primary objective of identifying key perspectives and insights regarding the Path to Treaty process and what a treaty or treaties, if any, could look like.

Whilst each session was scheduled for approximately 3.5 hours, many ran over time due to strong local interest. The sessions provided participants with a number of different opportunities to participate, such as:

- General discussion
- Group break-out sessions
- Stations to complete the online survey and
- Feedback via postcards.

## Written submissions and online surveys

The Queensland community was also invited to participate in the treaty conversation through the completion of an online survey or by sending through a short statement or submission via the DATSIP website.

Both feedback channels remained open for the duration of the community engagement process.

In total, 331 online surveys were completed during this time, and 38 written submissions were made. These broadly focused around aspirations for treaty, key issues for consideration, who needs to be involved, key elements of a treaty and next steps in the Path to Treaty process. A list of submissions is attached at Appendix C.



## 4. WHAT WE HEARD

*First and foremost, there was strong support for a treaty process from First Nations peoples and non-Indigenous Queenslanders alike, across all platforms. The online survey in particular, recorded almost 90 per cent support for a treaty from those that participated, levels that were reflected in the broader community engagement undertaken by the Treaty Working Group.*

## RESPONSES TO KEY QUESTIONS

The following pages summarise responses to five key questions<sup>164</sup> that were central to the community engagement sessions:

- Q1** What does a treaty mean to you?
- Q2** Who needs to be involved in the path to treaty journey?
- Q3** What would you like a treaty to achieve in Queensland?
- Q4** What would you like to see included in a treaty in Queensland?
- Q5** What needs to be done to support truth-telling as part of this path to treaty?

The nature of the questions allowed for open discussion and did not presume that treaty as a particular outcome would be one that would be wholeheartedly supported or even desired by the Queensland community.

### Key themes

Some key themes emerged from the community engagement process:

- First Nations' sovereignty was never ceded and First Nations continue to assert their sovereignty
- There is broad support for a treaty process, including a state-based treaty and/or local treaties
- Treaty/treaties must be legally binding
- The ongoing sovereignty of First Nations peoples and their inherent rights must be acknowledged
- Truth-telling is a necessary precursor to treaty-making
- Despite the disastrous impacts of colonisation, First Nations peoples have survived and continue to thrive
- A broad awareness campaign is needed to build public knowledge and support for treaty and its benefits
- Capacity-building efforts are needed to assist First Nations peoples become treaty-ready
- Determining the right representatives to speak for First Nations peoples and Country (cultural authority) will be a key issue
- It is important to adopt a human-rights based approach, framed by the United Nations Declaration on the Rights of Indigenous Peoples
- There is need for a mechanism to support truth-telling, representation and a treaty framework
- There is need for community jurisdiction and control over decision-making to substantively influence and tailor local services, as well as address perceived service deficiencies

- There is need for transparency and openness in future engagements and discussions
- Any treaty-making process will require certain mechanisms including potentially a First Nations Institute, a funding model, robust dispute resolution mechanism and appropriate ways to manage, store and collect data
- Need to ensure that First Nations peoples who have been removed or otherwise displaced are able to have a say
- Land tenure and access to Country are key issues
- Care should be taken not to build up false hope and be realistic about a timeframe and
- Native title is not considered by all as a way forward to negotiate a treaty.

When recording the voices of those engaged in the Path to Treaty process (as quoted extensively in the following pages), great lengths were taken to record comments verbatim. Paraphrasing was used in cases when multiple languages have been translated into English, such as the dialogues with community members on Thursday Island.

In facilitating the various community engagements, Treaty Working Group members indicated that their role was to aid discussions and report back the views of the public in this process in a manner that was faithful to what they heard. Treaty Working Group members stated at community forums that if the community told them they did not want a treaty this is what would be communicated back to the Queensland Government.

### Sovereignty was never ceded

The overwhelming view in the community was a positive one and recognised that a treaty would be a significant and long overdue milestone for the state. It was clear that there were strong hopes for what a treaty would mean and achieve. For many participants, a treaty was seen as a starting point of acknowledgement and recognition that First Nations peoples owned and occupied their land prior to colonisation:

*“Respect that Aboriginal and Torres Strait Islander people are the First Nations peoples and respect for our laws, culture and practices... it is about owning up, acknowledging that country was occupied by Indigenous people and listening to that voice.”<sup>165</sup>*

*“[Treaty means a] recognition of Aboriginal occupation prior to the invasion.”<sup>166</sup>*

For many First Nations, a treaty means addressing the omission and denial of First Nations peoples as the first peoples and sovereigns of Australia:

*“We need to be recognised as the sovereign people of this land. We own it all.”<sup>167</sup>*

*“The treaty [needs to] recognise the First Peoples, Aboriginal and Torres Strait Islanders... we want our sovereignty back.”<sup>168</sup>*

*“Treaty doesn’t mean anything apart from sovereignty: I’d rather that than anything in this country. Daily. Constantly we are monitored through everything we do... and if we don’t have sovereignty and land rights treaty does not mean anything”<sup>169</sup>*

Based on this premise many spoke about compensating and acknowledging the taking of their lands without consent and without a treaty or negotiation:

*“Treaty is about representing ancestors and satisfying what they lost and be compensated for those losses.”<sup>170</sup>*

*“A treaty or treaties between First Nations and the Queensland Government is important because it at last recognises that this land was and still is Aboriginal land and there needs to be a just settlement for the taking of this land.”<sup>171</sup>*

There is an evident willingness to negotiate a treaty to redress the past failures and injustices of the Australian nation to bring hope, a better future, and a more just relationship between First Nations peoples and the Queensland Government:

*“Acknowledgement of the past, but with a view to the future, we need to move forward.”<sup>172</sup>*

*“[Treaty is a] stepping-stone for the future for my children... so my kids understand the sky has no limit.”<sup>173</sup>*

Considering these views, it is not surprising that many believe engagement in any negotiation or treaty-making process must be meaningful and not tokenistic and therefore be framed around the acknowledgement of First Nations as the first peoples of Australia and their inherent rights to lands, waters, seas and air.

### Outcomes in the form of rights and legal obligations

It is evident that participants want to see substantive outcomes arising from treaty negotiations, such as the protection of rights:

*“If we’re going to be discussing treaty, it needs to be rights based.... a conversation about treaty involves international laws, rights and recognition.”<sup>174</sup>*

By exploring the potential for comprehensive agreement-making underpinned by a rights based approach, some see the United Nations Declaration of the Rights of Indigenous Peoples (see Appendix E) as a potential way to grant better protection of rights whilst addressing racial discrimination, and other principles:

*“Aboriginal and Torres Strait Islander people in Australia... we hold the rights of Indigenous people around the world to our land and to the resources—treaty if done wrong can take those rights down, we have to give things up we do not want to be doing that.”<sup>175</sup>*

Many people noted the status that the *Treaty of Waitangi* has in the national psyche of New Zealand, and hoped that a Queensland treaty process would transcend the written form to achieve similar prominence in the state:

*“Important that it is not just a piece of paper but something that has some teeth in order to really see something tangible.”<sup>176</sup>*

*“...Sign a document, like the Treaty of Waitangi; all these Elders got together. So all of us get together in Australia and sign the documents. Words mean nothing; lots have been happening. Barunga Statement; it doesn’t mean nothing. Has to be in black and white.”<sup>177</sup>*

<sup>165</sup> Barcaldine, November 2019.

<sup>166</sup> Townsville, October 2019.

<sup>167</sup> Gold Coast, December 2019.

<sup>168</sup> Caboolture, December 2019.

<sup>169</sup> Kingaroy, November 2019.

<sup>170</sup> Townsville, October 2019.

<sup>171</sup> Phil Pronger, Submission No 8, 1.

<sup>172</sup> Townsville October 2019.

<sup>173</sup> Logan, December 2019.

<sup>174</sup> Brisbane, November 2019.

<sup>175</sup> Brisbane, November 2019.

<sup>176</sup> Barcaldine, November 2019.

<sup>177</sup> Cherbourg, November 2019.

A viable treaty process in Queensland must offer First Nations rights some form of legal protection that is sufficiently sturdy enough to withstand political change, a key concern expressed at all the locations visited:

*“In six months time with an election, this might not be a conversation.”<sup>178</sup>*

*“We need to get this into legislation before the election it could change completely.”<sup>179</sup>*

Nonetheless, despite the inevitability of an upcoming state election, one participant deemed that:

*“Anything is possible, and it won’t stop our talks and we can’t stop moving forward.”<sup>180</sup>*

Some participants spoke specifically about the need for government to accept its obligation to provide, not only a recognition of prior occupation and better legal protection of rights, but also long-term resourcing and support to continue the Path to Treaty process:

*“Treaty... means hope ... instead of banging our heads against the wall in a white man’s system ... there was a system before white men came ... treaty means freedom to practice culture how we want to practice culture and having the resources and power to sort out issues ourselves”<sup>181</sup>*

### Reconciliation and practical solutions

Many people spoke and felt that a treaty means the restructuring of relationships between First Nations peoples and the Queensland State:

*“The treaty should seek to bring Queenslanders together and unify our state.”<sup>182</sup>*

*“Acknowledging each other—the good stories and the bad.”<sup>183</sup>*

Another participant felt that in order for a treaty to have broad ownership in the community, it must become an important symbol, much in the same way that NAIDOC Week has throughout Australia:

*“NAIDOC has become a strong symbol. A treaty needs to be that level of recognition and strength of message.”<sup>184</sup>*

178 Cairns, October 2019.  
 179 Cunnamulla, November 2019.  
 180 Cherbourg, November 2019.  
 181 Townsville, October 2019.  
 182 Caboolture, December 2019.  
 183 Barcardine, November 2019.  
 184 Mount Isa, November 2019.  
 185 Barcardine, November 2019.  
 186 Coen, October 2019.  
 187 Cairns, October 2019.  
 188 Townsville, October 2019.  
 189 Brisbane, November 2019.  
 190 Weipa, October 2019.

Nonetheless, participants were careful to note that although a treaty should represent an acknowledgement of First Nations rights and improve reconciliation, a treaty must also address of the social, cultural, political and spiritual matters that are important for communities and First Nations peoples. For example:

*“Treaty will allow us to connect to who we are (culture, bush food, language) and how to build capacity for generations to come. [It] will also allow us to create good employment opportunities such as through tourism.”<sup>185</sup>*

*“It means a lot in different ways. Might turnout different. Want to see good services, non-Indigenous and Indigenous services—everyone is entitled to good services.”<sup>186</sup>*

The poverty, injustice and disadvantage confronting many First Nations peoples is a huge issue that needs to be addressed for First Nations and for the rest of Queensland. A treaty could potentially mean both a broader acknowledgement of rights as well as practical ways forward to bridge the gap between First Nations and Queenslanders.

## Q2 Who needs to be involved in the path to treaty?

### Everyone

There was no shortage of perspectives on who should be involved in the process of treaty. For many, the short answer is 'everybody'. As a conversation that was open to all Queenslanders, many views were expressed. Overall, there was a strong emphasis on the need for this to be an inclusive process that involved First Nations peoples, non-Indigenous peoples and government alike.

*“Treaty is everybody’s business.”<sup>187</sup>*

*“Everyone should have a say in this.”<sup>188</sup>*

*“We’re all Queenslanders and we all have a voice.”<sup>189</sup>*

*“Treaty is like family, uniting everyone so everyone needs to be involved.”<sup>190</sup>*



Mackay consultation session, November 2019.

Many participants noted that broad support across the Queensland community is required to ensure the success of a treaty:

*“We need to ensure buy-in [from everyone] not just from Aboriginal and Torres Strait Islander people. Need people to stare down conservatives and people who will stand up for what is right.”<sup>191</sup>*

*“Treaty needs to be valued and embraced by all in order for success—will need to deal with the ‘it’s not my fault’ mentality as this will result in barriers moving forward with Path to Treaty. It will be important to identify common ground and aspirations.”<sup>192</sup>*

To a lesser extent there were discussions about the involvement of other entities such as community organisations, business, universities, pastoralists and churches:

*“Responsibility is on all of us, but also needs to be recognition of the parts played by banks, government and religion.”<sup>193</sup>*

The notion of shared responsibility was illustrated by some to help ensure the involvement of community and First Nations organisations, specifically those that nurture and develop the strength of First Nations peoples, such as men’s and women’s groups, youth, leadership and culture focussed groups:

*“Men’s and Women’s groups. Group in Weipa, mother used to work with the Elders in the community. It was a great experience to have three days in Chillli Beach—teach the young ones who are the future (white or black kids). When we are going—we want them to hear.”<sup>194</sup>*

*“Aboriginal and Torres Strait community controlled organisations such as QAIHC, Link up.”<sup>195</sup>*

Sometimes, however, the current availability of Indigenous organisations in some communities appeared to be seen as limited:

*“The only options are those aligned to a church or international organisations, not Indigenous services.”<sup>196</sup>*

*“Too many band-aid solutions on problems, substance and alcohol abuse—issues brought in by white man... [It’s] not working—going to white organisations.”<sup>197</sup>*

Ensuring the right organisations are involved to ensure effective expenditure of funds was stressed by one participant:

191 Barcaldine, November 2019.

192 Barcaldine, November 2019

193 Townsville, October 2019.

194 Weipa, October 2019.

195 Caboolture, December 2019.

196 Mt Isa, November 2019.

197 Ipswich, December 2019.

198 Coen, October 2019.

199 Caboolture, December 2019.

200 Roma, December 2019.

201 Barcaldine, November 2019.

202 Toowoomba, December 2019.

203 Mackay, November 2019.

*“How do you get people to better manage their assets? So [that] it’s not a cycle of waste. Housing is a key issue for people who want to live on Country. Getting the right organisations involved is key and [relevant to] how much you will invest”<sup>198</sup>*

Some participants spoke about the importance of involving organisations that could support and drive reform to improve the lives of all Australians and the future of Australian leadership, such as inter-governmental peak bodies like the Council of Australian Governments (COAG) and peak consultative committees:

*“Indigenous networks—-independent alliances, reconciliation groups, and local groups.”<sup>199</sup>*

Constitutional amendment to recognise First Nation peoples was another theme raised often:

*“I’ve always wished that the government would recognise Indigenous people in their constitution. A treaty will hopefully see the constitution change and can’t see if I will ever see a treaty in my time.”<sup>200</sup>*

Local government was also regarded by some as a key player in the treaty journey with an ability to influence and advocate:

*“Councils have an important role to play. Local Government support to advocate to government—bottom up becomes very powerful.”<sup>201</sup>*

*“The local council should have a representative here. I believe a recommendation should be set up to be sent to council. If the local government is not interested in the pathway to treaty, it is going to be a slow process.”<sup>202</sup>*

*“Non-Indigenous people want to know about history, but Aboriginal people can’t be only ones telling the story, needs to be supported by Government and Council.”<sup>203</sup>*

Many consider a treaty as a journey involving First Nations peoples, non-Indigenous Queenslanders, business, organisations and the Queensland government getting together to reach a point where they can sit down and negotiate ways for inclusive nation building.



Cunnamulla consultation session, November 2019.

## First Nations involvement and rebuilding First Nations

Most responses indicated support for a broad overarching treaty process that would involve First Nations peoples. Views expressed reiterated the need for a diversity of demographics involved, including Traditional Owners, Elders, youth and leaders:

*“Elders, youth, recognised leaders and traditional groups/ custodians with knowledge, leaders in the community and community-based organisations should all be involved in any treaty.”<sup>204</sup>*

The question also raised clear concerns amongst First Nations peoples about the need to ensure that current and future treaty negotiations were inclusive of particularly vulnerable or marginalised groups such as young people, those in foster care, those who are members of the Stolen Generations, those living with disabilities and those who are incarcerated, as well as those who are otherwise displaced or living off Country:

*“A lot of kids who come into care don’t know about their own culture.”<sup>205</sup>*

*“Those young people caught up in our systems, they are also an important part of the discussions to build the processes for the future.”<sup>206</sup>*

*“We need to remember our youth because they will sit in our seats before too long. Young people should be sitting in and talking rather than older people. Go into the school and have youth discussions about the issues. Youth should be a higher priority.”<sup>207</sup>*

The question of how to accommodate the views of the majority of Torres Strait Islanders living on the Queensland mainland was commonly raised throughout conversations and, conversely, the need to ensure that Torres Strait Islander peoples who live in the homelands have a voice in processes set up in the mainland, particularly those relevant to potential changes in their region:

*“Who gives the political authority to speak for Torres Strait? I want equity for conversations”<sup>208</sup>*

*“Who is our representative from here [in the Torres Strait]? We want our own people to run this place. Has to be bloodline. These people don’t speak for me. We want our own people. Green, white and blue. [Our] politics and cultural governance is different.”<sup>209</sup>*

*“Recognition of existing and emerging Indigenous governance at the local level.”<sup>210</sup>*

In Thursday Island, a point that was highlighted in different ways by several community members was the challenge for us to look at ways to find common ground through our laws:

*“If you can’t ‘fit in’ the customary law that underpins the culture of First Nations peoples into the western law then it will never work because they’ve got to complement each other, the government have to work with the people and the people have to work with the government.”<sup>211</sup>*

This led to a dialogue about whether the younger generation in the Torres Strait region is ready or being prepared for the leadership with the negotiation skills required to do this work. They discussed language as a key area of concern and the need to nurture future leaders adequately.

Teachers in schools are speaking to their children and grandchildren in Creole and Broken English. As a result, people believe that this generation may not be learning how to master the English language. The children are able to practice Creole and/or language at home and in the community. To prepare the next generation for Treaty work they must master English so they can walk and work in two worlds:

*“Because they don’t understand English, they don’t speak English here, the teacher are coming up but they’re learning the broken English, in the past most people spoke traditional language so they taught English as a second language, our young people here, now, are way behind in English.”<sup>212</sup>*

There is a strong desire and aspiration for the First Nations people of the Torres Strait to be the teachers, the police, the doctors, the pilots, through a plan to simultaneously build the capacity of the young First Nations people and over time transition non-Indigenous professionals and workers out.

*“We want to control the destiny of our people and we want to work closely with the government and for the government to work closely with us.”<sup>213</sup>*

Whilst there was a significant amount of comradery amongst Aboriginal and Torres Strait Islander peoples throughout this process, including acknowledgment of the way in which the two groups have supported each other through the common experience of colonisation, there was a desire to acknowledge the distinct identities that underlie this union and to ensure that this was enlivened through any treaty process.

<sup>204</sup> Cairns, October 2019.

<sup>205</sup> Brisbane, November 2019.

<sup>206</sup> Birdsville, November 2019.

<sup>207</sup> Cairns, October 2019.

<sup>208</sup> Cairns, October 2019.

<sup>209</sup> Thursday Island, November 2019.

<sup>210</sup> Cairns, October 2019.

<sup>211</sup> Thursday Island, November 2019.

<sup>212</sup> Thursday Island, November 2019.

<sup>213</sup> Thursday Island, November 2019.

*“Anything like this should be equally balanced with Aboriginal and Torres Strait Islanders. With regard to consultations, I sat here in the Townsville consultations. I have to make my way to Torres Strait to talk about a Torres Strait Islander treaty.”<sup>214</sup>*

*“I always support everything to be happening here with the Torres Straits, because it is our rights and who we are, whether you sit down with that department. We fought for you-you-mi (us)—Aboriginal and Torres Strait Islander peoples.”<sup>215</sup>*

Whilst it is evident that First Nations peoples need to be involved in making the decisions that affect their lives, many spoke about the current lack of representation in most of Queensland’s (and Australia’s) parliaments and associated political processes. Consequently, they felt a critical precursor is to establish democratic negotiation based on clear protocols and principles:

*“Having protocols in place about who can speak on what Country can help—this is work that First Nations people need to do—this is how we practice treaty.”<sup>216</sup>*

*“Before the government can talk about treaty, it must be a diplomatic process with Torres Strait Islander people also Torres Strait Islander people living on mainland.”<sup>217</sup>*

Sometimes these are disrespected:

*“Protocols are disrespected—no consultation—a treaty is about nation building but the other side is not respecting protocols e.g. councils.”<sup>218</sup>*

*Closely related to the above were questions of whether First Nations are treaty ready. Some considered they were always ready.”<sup>219</sup>*

Others pointed to the fact that First Nations have existing frameworks and protocols outlining how individuals, groups and nations should interact with each other and these have been in place for thousands of years. These relationships highlight a tradition of political relationships between First Nations peoples:

*“Treaty is like blood which unites one family—all of us—we are a global village.”<sup>220</sup>*

*“It is our tribal system that has sustained us.”<sup>221</sup>*

*“Treaty is our clan groups from a long time ago.”<sup>222</sup>*

<sup>214</sup> Townsville, November 2019.

<sup>215</sup> Thursday Island, November 2019.

<sup>216</sup> Gold Coast, December 2019.

<sup>217</sup> Thursday Island, November 2019.

<sup>218</sup> Mitchell, December 2019.

<sup>219</sup> Cairns, October 2019.

<sup>220</sup> Weipa, October 2019.

<sup>221</sup> Townsville, October 2019.

<sup>222</sup> Cairns, October 2019.

<sup>223</sup> Barcaldine, November 2019.

<sup>224</sup> Brisbane, November 2019.

<sup>225</sup> Townsville, October 2019.

<sup>226</sup> Townsville, October 2019.

<sup>227</sup> Cairns, October 2019.

<sup>228</sup> Townsville, October 2019.

<sup>229</sup> Cairns, October 2019.

<sup>230</sup> Logan, December 2019.

Whilst First Nations have continued to act as political entities, mainly through enforcing their rights to their lands and resources, it was noted by many the need to reconcile, rebuild and strengthen First Nations political entities and governance systems. For some concerns were centred around building capacity and taking the time to work it out amongst themselves before approaching government and the rest of Queensland:

*“Need a process to have a treaty amongst Aboriginal and Torres Strait Islander people first.”<sup>223</sup>*

*“Communities haven’t met or talked amongst themselves, we need support and resources for each community to talk amongst themselves.”<sup>224</sup>*

How First Nations politics and governance may be formally represented is outlined further in the following section.

### **Formalising First Nations Involvement**

Unsurprisingly, discussions about who should be involved from a First Nations perspective quickly led to who would formally represent each nation and negotiate a treaty, including individual treaties that would suit local aspirations, histories and cultures. Existing cultural governance structures, organisations as well as issues-based and land-based representation were considered to play a key role:

*“We need engagement with all nations and regional collectives; issues-based representation and cultural representation, related to land”.<sup>225</sup>*

*“Need to work with clans and nations.”<sup>226</sup>*

*“Treaty should be between the government and the many nations in Queensland.”<sup>227</sup>*

*“Needs to progress with some level of local, regional and state representation.”<sup>228</sup>*

*“Recognise cultural governance structures already in place.”<sup>229</sup>*

*“Treaty must include recognition of cultural authority.”<sup>230</sup>*



Cairns consultation session, October 2019.

There was an undercurrent that certain groups such as Traditional Owners or native title groups should not be preferenced to the exclusion of other First Nations peoples in being able to have their say:

*“There is a need to protect us all not just native title groups.”<sup>231</sup>*

*“Not necessarily the Traditional Owners to talk to as there are a lot of displaced people.”<sup>232</sup>*

*“It is not only Traditional Owners that have a place in these communities. I am very proud of this community and call this my home.”<sup>233</sup>*

*“There is a fear that the government will think ... that one point of reference to community is enough, however this is not enough because it doesn’t represent all community. Here in Rockhampton, the population has been made up of people who have come from all over the place. Many through the local reserve like Woorabinda—we know that there are over 30 traditional groups who were taken to Woorabinda and forced to live there, exempt groups come here and need to be recognised.”<sup>234</sup>*

*“A treaty is the ability to make agreements where everyone has a voice, not just those mobs in power or ‘leaders’.”<sup>235</sup>*

Many First Nations people identify with each other primarily at the local or regional level. Unsurprisingly, it was suggested representative processes were those that aligned with how people most readily think themselves as a group. For example, one participant in Cairns saw the regional level as being representative but others focussed on representation at the local level:

*“In relation to representation, there needs to be a broad-based community consultation carried out by elected representatives across a regional footprint. This regional elected representation should be made up of both males and females and would meet with the respective groups across the regional footprint in detailed discussions. These discussions would be collated into an agreed document and then presented to a meeting of the regional membership to endorse or amend the draft document.”<sup>236</sup>*

*“One body that people come to for approval to access traditional lands; a local authority to control.”<sup>237</sup>*

<sup>231</sup> Cairns, October 2019.

<sup>232</sup> Weipa, October 2019.

<sup>233</sup> Weipa, October 2019.

<sup>234</sup> Rockhampton, December 2019.

<sup>235</sup> Townsville, October 2019.

<sup>236</sup> Cairns, October 2019.

<sup>237</sup> Birdsville, November 2019.

<sup>238</sup> Cherbourg, November 2019.

<sup>239</sup> Woorabinda, December 2019.

<sup>240</sup> Birdsville, November 2019.

<sup>241</sup> Cairns, October 2019.

<sup>242</sup> Cairns, October 2019.

<sup>243</sup> Mitchell, December 2019.

<sup>244</sup> Townsville, October 2019.

Despite these nuances some see the treaty as significant in terms of dealing with fundamental relationships between peoples:

*“In Queensland, a lot of people have moved or been taken away from one area to another, and we Aboriginal people need to come together to agree to disagree or come to some formal agreement before we start having discussions with everyone.”<sup>238</sup>*

*“We need to find another chapter in this treaty stuff - we walk together as one - not one leading another.”<sup>239</sup>*

Some members of the community on Thursday Island questioned where a treaty with the state of Queensland would fit, given their existing aspirations for regional autonomy and their relationship with the Commonwealth. Similarly, although there is some support for negotiating at the regional level, there is also a national dimension, particularly when considering state boundaries, which commonly cut through the middle of cultural boundaries, governance and jurisdictions:

*“What happens when Traditional Owner country runs over Queensland border lines? There is a fourth level of government which is ours—must be autonomous within a broader context—resource sharing, protect sites of significance—ways and means that we can have a formal conversation with other levels of government, at local level, state government to amend the local government act for Traditional Owners to have an ex officio right to be on any local council—legal planning allows Traditional Owners to have a say about what happens on their country.”<sup>240</sup>*

*“Acknowledge that various Indigenous nations exist over numerous state jurisdictions, for example Birdsville and other locations on Queensland state borders.”<sup>241</sup>*

Given the ‘newness’ of this iteration of treaty development, an emerging theme was whether or not a new process, as opposed to existing governance processes should carry the work of treaty forward.

*“There needs to be an election process by the local community.”<sup>242</sup>*

*“I would like to see more than one representative for our people—our community is unique.”<sup>243</sup>*

*“First Nations people need representation. A voice to raise our issues. It is impossible to make a treaty system suitable for the people if the people don’t have a say in its design.”<sup>244</sup>*



Thursday Island consultation session, November 2019.

*“In terms of community representation, we already have a system. Mobs don’t want to be a part of a new system other people have thrown together. But with treaty, you could have that representation at a local level. Really important for us to have a mechanism, but the hard part is deciding who’s going to be the representatives. Who is authorised to speak on behalf of people is a serious question to be asking.”<sup>245</sup>*

This highlights that a treaty process in Queensland should aspire towards establishing a mechanism that takes into account what First Nations want, or build on what they have already, whether at the local, regional and state levels. Many proposed a First Nations Institute or equivalent:

*“We have to speak for us... we could potentially have something like a first nations institute to handle nation building initiatives and community governance.”<sup>246</sup>*

*“We at this table are already educated. We’ve been tasked even as kids to ensure our history continues. What we need is an institute to continue this work.”<sup>247</sup>*

*“Host a Torres Strait Summit in July 2020 to support local governance and advance treaty discussion.”<sup>248</sup>*

*“The establishment of a Torres Strait Institute—on Thursday Island and on the mainland.”<sup>249</sup>*

In the majority of the community conversations community members reflected on the fight for self-determination in the past decades and acknowledged the processes that have disempowered First Nations peoples. Particularly the stress and strain the native title process put on relationships within families and communities, thus creating another disruption that further alienated First Nations people from their value systems.

*“The very first thing we need to do is reconcile between ourselves as First Nations peoples. Aboriginal people talking to each other, Torres Strait Islander people talking to each other and then coming together after.”<sup>250</sup>*

On Thursday Island, there was a call for a Torres Strait Summit to strengthen local governance, advance Treaty discussions and bring together Torres Strait Islanders in the region and on the mainland.

In summary, the intent of this mechanism is to identify community aspirations for a treaty and further understandings on best ways forward, rather than negotiating a treaty itself. This must be guided by an equitable and rights-based approach and will set the framework for a process that is inclusive of all First Nations peoples, now and into the future.

<sup>245</sup> Mt Isa, November 2019.

<sup>246</sup> Townsville, October 2019.

<sup>247</sup> Mt Isa, November 2019.

<sup>248</sup> Thursday Island, November 2019.

<sup>249</sup> Thursday Island, November 2019.

<sup>250</sup> Townsville, October 2019.

<sup>251</sup> Mackay, November 2019.

<sup>252</sup> Brynn Matthews, submission no. 19, 1.

<sup>253</sup> Mackay, November 2019.

<sup>254</sup> Brisbane, November 2019.

<sup>255</sup> Woorabinda, December 2019.

## Engaging non-Indigenous Queenslanders

It was recognised throughout the engagements, that the treaty process had to be one that involved and had broad ownership amongst all peoples, including non-Indigenous peoples. Indigenous and non-Indigenous participants both saw this as a necessary part of improving the relationship between themselves and towards realising a treaty itself.

Support from non-Indigenous Queenslanders throughout this process displayed a number of key themes, namely:

- a genuine desire to know and tell the truth of the history of their state, including the treatment of First Nations peoples
- a need to acknowledge the sovereignty of First Nations peoples
- a desire to rebuild the relationship with First Nations peoples.

Many non-Indigenous Queenslanders indicated that this was a process that would mean a lot to all Queenslanders, not just to First Nations peoples and they equally would like to see it deliver some meaningful outcomes:

*“This is the shared experience and white fellas need to get on board. Has to be community wide. It’s going to be great for Australia, get on board. We have a shared responsibility. It is so important, and we have to step up and stop letting Aboriginal and Torres Strait Islander people tell the story over and over again. We have a responsibility to tell that story because it is part of us.”<sup>251</sup>*

*“As a white, 4th generation Australian, I desperately want to heal the rift and historical trauma between non-Indigenous and Indigenous Australia. But unfortunately, our First Nations have been so mistreated and cheated by successive Queensland governments that they are very wary that anything being put forward by government is just another ploy or con to rip them off.”<sup>252</sup>*

First Nations peoples identified that they could not go through a treaty process alone but, equally, that non-Indigenous people needed to be actively engaged in future efforts towards securing a treaty.

*“It should be an inclusive process – not all one-sided, not just Aboriginal and Torres Strait Islander people doing the heavy lifting.”<sup>253</sup>*

*“There is a role for non-Indigenous people to witness and listen to Aboriginal and Torres Strait Islander peoples.”<sup>254</sup>*

*“We want a treaty to get non-Indigenous to see us as human beings and doing things together.”<sup>255</sup>*

It was clear that future steps to garner greater support for a treaty must broadly engage non-Indigenous Queenslanders on a much larger scale than was evident through the short community engagement process.

Some First Nations people raised the 2000 Bridge Walk as an example of the support they hoped to see from non-Indigenous peoples on the matter of treaty. In order to achieve this, First Nations people identified the need to ensure that the Path to Treaty process became a people's movement and this required a much broader 'hearts and minds' campaign to engage non-Indigenous peoples, particularly the younger generations, whom they saw as the likely beneficiaries of any treaty process:

*"More advertising—media, TV, social media from non-Indigenous communities so that they understand better... it will be the pathway. Let's talk campaign. Get it on the TV—it's everyone's business... it needs to be out."*<sup>256</sup>

*"We need to connect with the young, kids campaigning, using the media in a positive way. It has to be a movement of the people. We need to create an awareness amongst the people the broader community."*<sup>257</sup>

*"Put out a campaign—there should be no fear. Get a conversation going with everyone."*<sup>258</sup>

There is a significant need to invest in a process that brings all Queenslanders along on the Path to Treaty.

- Appropriate service delivery for First Nations peoples through leadership and capacity building to ensure better results from the expenditure of money. This includes in service areas such as health, education and housing.

### Reconciliation and relationships

For some, a treaty presented an opportunity towards a new life and future for First Nations Queenslanders:

*"A treaty needs to be able to help with all the negative social aspects keeping black fellas down. Because of our hearts and compassion and things we have to deal with every day. We're tired. We're waiting for this great salvation to come along so we can get out of that ugliness."*<sup>259</sup>

There was much focus throughout the engagement process that a treaty process would reframe the way that First Nations peoples engage with non-Indigenous people as well as government.

*"Treaty is about relationships and relationship building and there is an opportunity to reset relationships to bring about a range of things."*<sup>260</sup>

There was significant optimism and hope that a treaty process that had truth-telling at its core would fundamentally change the relationship between First Nations and non-Indigenous Queenslanders.

*"Reconciliation comes off the back of truth-telling and we need to learn that history and be proud of that history first and foremost as First Australians and be proud of our culture and the battles of the past for where we are heading in the future."*<sup>261</sup>

Supported by a comprehensive process of truth-telling across both schools and the broader public arena, First Nations peoples hoped that current and future generations of non-Indigenous Queenslanders would deepen their understanding of the history of their State. In particular, it was hoped that this process could help to change the negative mindsets, attitudes and behaviours towards First Nations peoples.

*"Australia can be expanded and strengthened. The Path to Treaty/Treaties will assist this if we give it the genuine, mutually respectful community conversation that it needs."*<sup>262</sup>

*"This is a real opportunity for us to build a process for nation building and truth-telling to occur."*<sup>263</sup>

*"Frame the conversation so it is not about blame, not blaming yesterday's ancestors, move on together."*<sup>264</sup>

*"Need to start thinking about this education so that everyone comes along on the journey. Indigenous people who represent only three per cent of the population cannot do it without the non-Indigenous population in the room with us."*<sup>265</sup>

## Q3 What would you like a treaty to achieve in Queensland?

A number of aspirations emerged throughout the Path to Treaty process. Broadly, these related to:

- Improving relationships between First Nations peoples and non-Indigenous Queenslanders, in a manner that can offer improved mutual understanding, informed by the truth of the past and in a way that offers healing for both groups
- Providing greater protection and support for the rights of First Nations peoples across all areas, but particularly in relation to land, cultural and economic sustainability and self-governance
- Rebuilding First Nations by addressing long-standing questions in relation to redress for historical acts of trauma and dispossession

<sup>256</sup> Mackay, November 2019.

<sup>257</sup> Weipa, October 2019.

<sup>258</sup> Mackay, November 2019.

<sup>259</sup> Mt Isa, November 2019.

<sup>260</sup> Roma, December 2019.

<sup>261</sup> Roma, December 2019.

<sup>262</sup> Brisbane, November 2019.

<sup>263</sup> Roma, December 2019.

<sup>264</sup> Brisbane, November 2019.

<sup>265</sup> Brisbane, November 2019.

Unsurprisingly, reconciliation was commonly referred to in the conversations, ranging from a questioning of the term's definition to a deep appreciation of the role the Australian reconciliation movement has played in bringing the Queensland Government to this point. Some participants noted that the example some corporations have made building relationships, advocating and negotiating agreements with First Nations through their Reconciliation Actions Plans over the past decade has been inspiring. The leadership of the Queensland Government in this area was also noted, including its commitment to a Stretch Reconciliation Action Plan (2018–2021).

A strong and clear message coming from all community conversations in relation to the understanding and acknowledgement of past hurts, was that this could only occur through a comprehensive and meaningful truth-telling process, one that ensures all Queenslanders are aware and educated about the untaught, conveniently ignored history of the state and the ongoing negative impact this has had on Queensland's First Nations. As one would expect in repairing relationships, it is through truth-telling and the understanding of the impact of injustice that healing will occur. This message was strong, loud and clear.

Many non-Indigenous people also recognised the need for truth-telling and awareness of how the past informs the present. In doing so, they hoped that a treaty process would spark greater empathy and action in other non-Indigenous Queenslanders.

*"Everyone needs to be involved and accountable and responsible for the education and changing our mindset. We are the most racist people and these conversations are normalised: this is a chance to talk and build relationships and work towards truth and reconciliation."*<sup>266</sup>

*"Reconciliation is everyone's responsibility. Our hope is that the treaty would allow for similar recognition of those who strive for recognition of the unique place that our First Nations people hold and to serve as an inspiration for all Queenslanders to work for a better understanding of the histories, cultures and spiritualities of Aboriginal and Torres Strait Islander peoples."*<sup>267</sup>

*"QCEC would like to see a treaty promote greater understanding of, and appreciation for, the histories, cultures and spiritualities of our First Nations People, and be a positive step towards true and lasting reconciliation. We would like to see the treaty develop a meaningful framework that is inclusive of all Aboriginal and Torres Strait Islander groups, with short and long-term goals that enable empowerment, meaningful change and targeted success."*<sup>268</sup>

With this in mind, it was hoped that a treaty process, informed by a process of truth-telling, might not only reframe the relationship but also inspire another peoples' movement about the need for treaty.

*"We know that what occurred in the past was wrong and unjust, so let's be committed to addressing this. Be courageous and move forward knowing that this is just simply the right thing to do."*<sup>269</sup>

*"In 1967, we did the right thing and stood up and said Aboriginal and Torres Strait Islander people were one of us. We rejected the status quo to move towards a better and more inclusive Australia. We acknowledged that we had not done the right thing in the past and needed to correct this. We knew, too, that this past error had diminished us."*<sup>270</sup>

*"This is another time in our history when we, ordinary Queenslanders, can lead in righting another unfairness from our colonial past. Aboriginal and Torres Strait Islander peoples have never ceded sovereignty. They have embraced and cared for this, their home, for at least 60,000 years and maintained an ongoing cultural, social and historical connection with the Australian lands and waters."*<sup>271</sup>

*"Through hard work and patience (by both parties) it is now clear that our First Nations peoples and our colonising society can come to agreement that a treaty is the path to pursue to embrace and achieve a respectful and harmonious relationship for the future. I fully support the Path to Treaty with Queensland Indigenous citizens. I look forward to the happy day dawning with an agreed treaty signed by all parties. And then we will learn from each other how to preserve, and benefit from, our beautiful land."*<sup>272</sup>

*There were great aspirations amongst some non-Indigenous people about what a treaty process could achieve, particularly alongside major milestones for First Nations peoples and reconciliation in this country. Many people referenced the People's Walk for Reconciliation in Brisbane, where 70,000 people walked across the bridge in support of Indigenous rights.*<sup>273</sup>

Non-Indigenous Australians stood up and overwhelmingly voted to change the Constitution to allow the Commonwealth to make laws for Aboriginal peoples. However, some non-Indigenous Queenslanders acknowledged that whilst the referendum in particular was an historic event, it did not ask much of non-Indigenous Australians and that a treaty offered an opportunity to contribute significantly to the reconciliation process. Some suggested specific steps that could be taken to mobilise participation from non-Indigenous people in a treaty process:



Brisbane consultation session, October 2019.

<sup>266</sup> Brisbane, November 2019.

<sup>267</sup> Queensland Catholic Education Commission, submission no.29, 2.

<sup>268</sup> Queensland Catholic Education Commission, submission no.29, 1.

<sup>269</sup> Samantha Lillie, submission no.10, 2

<sup>270</sup> Margaret Evans, submission no.16, 1.

<sup>271</sup> Margaret Evans, submission no.16, 1.

<sup>272</sup> Margaret Evans, submission no.16, 1.

<sup>273</sup> Queensland State Library website, People's Walk for Reconciliation, available online at: <http://blogs.slg.qld.gov.au/jol/2017/05/31/peoples-walk-for-reconciliation-4-june-2000/>, (accessed online 6 January 2020).

*“While many of us were delighted (and surprised) at the referendum result in 1967, it did not ask much of mainstream Australia in relation to First Peoples.”<sup>274</sup>*

*“Non-Indigenous people obviously need to be brought on-side. Perhaps resources/information sheets could be made available for community members who want to champion the path to treaties, to share amongst their families, friends, colleagues.”<sup>275</sup>*

Beyond the relationship between First Nations and non-Indigenous Queenslanders, there was also the sentiment that a treaty would inspire a better relationship with government, made possible through greater rights to self-determination and self-governance which would enable them to have a greater say over their own affairs:

*“You need a structure, you need that system that allows people to work together. We’re still living in a third world country here, in terms of services and infrastructure. The further you are from major cities, the less you get, they pour all this money into coastal areas. We need a process/treaty that allow for organisations in local areas, that feed back to a regional group, but basically an organisation of people coming together to provide a voice and also provide services and be accountable where it counts.”<sup>276</sup>*

*“We need our own form of governance, [we are] at the mercy of parliament all the time, should have our own body of governance ourselves.”<sup>277</sup>*

Some First Nations peoples felt a sense of responsibility to future generations and believed that a treaty offered a sense of hope and optimism that was worth considering:

*“We need to be positive and think about the future, in the next 10 years, 75 per cent of the Aboriginal population will be 25 and under. Look at all the things that come with that, and we need strong foundation for them all to step into and it is our responsibility to step into that.”<sup>278</sup>*

## Rights and Redress

Many participants who engaged in this process also saw treaty as a vehicle to better realise their human rights as First Nations peoples across all areas. This was particularly the case in relation to addressing current levels of disadvantage and receiving compensation for historical acts.

Some saw recompense as integral to any treaty process, allowing for a settlement to be struck both for past acts such as dispossession, but also the resulting impact that colonisation has had on First Nations peoples:

*“Redress is important—[the] wealth of this nation is built on the dispossession of Traditional Owners—cannot have a treaty recognition being hollow with rights and redress. Would rather wait 100 years if this is not on the table.”<sup>279</sup>*

*“The process must look at compensation for stolen land.”<sup>280</sup>*

*“Reparations—particularly for the land that was taken.”<sup>281</sup>*

*“We support the New Zealand approach of returning to Aboriginal or Torres Strait Islander people Crown land that is of significance. We also appreciate the importance of a compensation fund with the purpose of supporting Indigenous people to overcome disadvantage.”<sup>282</sup>*

*“We need sovereignty, compensation and acknowledgement. There needs to be a giving back of the land and a compensation package around the land.”<sup>283</sup>*

In identifying the need for compensation, some participants specifically identified the expectations that were placed on First Nations peoples to simply engage in the housing market when the government was responsible for burning their houses in the first place:

*“They want us to buy our own houses off the Mapoon Council when they burnt our houses.”<sup>284</sup>*

By contrast, some participants saw strengthening rights to culture, education and economic sustainability as key priority areas under a treaty:

*“Some don’t care about money, some just want to contribute to their community, want to study/upskill and go to Country.”<sup>285</sup>*

*“Ensure that when people come to the table there is no money involved, my culture is not for sale.”<sup>286</sup>*

*“I’d like to see a real concerted effort in maintaining or retaining culture—not just maintaining. And for youth to have the opportunity to learn their language and learn the Indigenous crafts to learn that sense of pride to learn where they come from and who they are.”<sup>287</sup>*

*“We want to teach our kids the positive stuff like our culture, our Elders, and pride in our voice.”<sup>288</sup>*

<sup>274</sup> Wayne Sanderson, submission no. 5, 1.

<sup>275</sup> Michelle Peile, submission no.6, 1.

<sup>276</sup> Brisbane, November 2019.

<sup>277</sup> Brisbane, November 2019.

<sup>278</sup> Roma, December 2019.

<sup>279</sup> Brisbane, November 2019.

<sup>280</sup> Michelle Peile, submission no.6, 1.

<sup>281</sup> Caboolture, December 2019.

<sup>282</sup> Central Queensland Indigenous Development, submission no.27, 3.

<sup>283</sup> Charleville, November 2019.

<sup>284</sup> Weipa, October 2019.

<sup>285</sup> Townsville, October 2019.

<sup>286</sup> Woorabinda, December 2019.

<sup>287</sup> Townsville, October 2019.

<sup>288</sup> Woorabinda, December 2019.



George Tonga and Deb Netuschil, Mackay consultation session, November 2019.

## First Nations community control of service delivery

One of the most common issues raised throughout the community engagement process was the need for a treaty to have a meaningful effect on the lives of First Nations peoples.

At all 24 locations visited, people articulated their hope that the process of treaty-making would highlight the inadequacies of the failed or failing service delivery model that has been delivered to First Nation peoples and the communities they call home.

Whether this was in relation to child welfare services, access to clean water, affordable housing, or healthcare, participants expressed a clear desire for any future process to deal with First Nations day-to-day realities. One key issue highlighted was the inability of government, government agencies and NGOs to recognise the wealth of cultural knowledge that Elders hold, and the authority that this can bring to the planning and implementation of culturally appropriate service delivery.

Critical to this shift is the appreciation of the need to build capability within First Nations governance, particularly for First Nations service providers who are representative of the communities they make decisions for. There was a general consensus that human service delivery has failed, making community members feel disengaged and disconnected.<sup>289</sup>

In Rockhampton, participants emphasised the need to value and appreciate the cultural capital that already exists, and whilst cultural awareness and cultural competency training programs are in place, many feel that non-Indigenous staff pay little attention to relationship-building within the community setting.<sup>290</sup>

Consequently, many emphasised the need for cultural capability and the recognition of cultural capital and capacity:

*“We need to ensure culture competency within health system and ensure that cultural practices that aren’t recognised in the mainstream systems begin to be recognised. Too many big organisations get funding for programs that aren’t culturally competent.”<sup>291</sup>*

*“Recognition of capability. Actual consultation and buy in for policy. The voices of grassroots people.”<sup>292</sup>*

Issues related to a lack of acknowledging cultural capital included Fly in Fly Out (FIFO) practices of service providers<sup>293</sup> and the lack of cultural norms and culturally safe practices.<sup>294</sup>

As a result, many see the importance of having services delivered by someone of the same cultural value system and believe this will have a more positive impact on First Nations peoples:

*“Achieve services delivered by Aboriginal people to Aboriginal people... need to go out to communities with their culture guiding that.”<sup>295</sup>*

The call for community-controlled services and a more holistic approach to matching needs to achievable outcomes was underpinned by a hopeful and equitable future of opportunity:

*“An equal start in life is equal access to services.”<sup>296</sup>*

It is clear that the transfer of decision-making authority at the local level, or directly towards First Nations peoples is a key to ensure a shift to self-determination:

*“Self-determination and power to make decisions, for example to negotiate royalties.”<sup>297</sup>*

*“Self-determination right for local people to be able to have a say about what it looks like for them.”<sup>298</sup>*

Building capacity to nurture self-determination could also mean increasing the capacity for independent First Nations’ economies and an ability to control expenditure in First Nations’ communities to contribute to wellbeing and a better quality of life:

*“Allow our people to one day be born into wealth. To realise generational prosperity. Before invasion we were the doctors, the professors, we were the scientist. We don’t want to be reliant on grants or funding from government.”<sup>299</sup>*

*“View is that we are the First People. We aren’t saying that we own this land. We are only here as caretakers. We want to be recognised as the First People here. Give more funding to grassroots organisations. My father always said we are the experts of our own people.”<sup>300</sup>*

*“Treaty needs to encompass agreements government are making with other countries that affect us. Such as agreements with international mining companies. They need to consider the Traditional Owners and the local economies first. The local people need to be better off. Not refused jobs and opportunities.”<sup>301</sup>*

*“Employment gives self-esteem and builds capacity. See lots of funding [we] need to see them channelled into the right places. How do you channel it to be effective?”<sup>302</sup>*

289 Cunnamulla, November 2019.

290 Weipa, October 2019.

291 Logan, December 2019.

292 Mt Isa, November 2019.

293 Kowanyama, October 2019.

294 Rockhampton, November 2019.

295 Barcaldine, November 2019.

296 Coen, October 2019.

297 Townsville, October 2019.

298 Woorabinda, December 2019.

299 Townsville, October 2019.

300 Ipswich, November 2019.

301 Mt Isa, November 2019.

302 Coen, October 2019.

Nonetheless many raised issues of inequitable funding arrangements, intermittent program delivery due to short-term funding cycles and centrally determined priorities:

*“Funding has typically been to the remote and discrete communities, but mob have issues all across the state. All voices need to be heard. Ignoring people on the ground won’t resolve problems.”<sup>303</sup>*

In part, relating to the above issue is the growing number of non-Indigenous services delivering programs that are not aligned with community aspirations. Consequently, there was a resounding call for government to fund local/community-controlled services at appropriate levels and to engage in outcome-based dialogue with all members of the community, not just the local council or perceived leaders.

Building on these points, many believe that a treaty should achieve empowerment and the legal ability to make decisions over the things that matter within a community. This might mean actively pursuing innovative ways to seek funding and or capital to establish an economic foundation for their communities: the Brisbane session considered a number of suggestions, such as a future fund and sustaining the resourcing of this fund through sharing national revenue, commodification of traditional knowledge and the sharing of land resources.

Communities clearly see the benefit of the state-based treaty process to bridge the gap and ensure capability and locally-led decision making, which could be tailored at the local level to meet their own needs and priorities. In this way, state-based treaties provide a good vehicle for this as the primary mechanism for improving service delivery and overcoming social determinants in community for health, housing, life expectancy, child protection and so on. This must be done simultaneously with accountability, transparency and the right use of data and research for the communities to make informed decisions.<sup>304</sup>

## Q4 What would you like to see included in a treaty in Queensland?

The Treaty Working Group heard many perspectives on what should be in a treaty. Whilst this section is not an exhaustive reflection of each item for inclusion, it does give an indication of what participants saw as the key areas. A snapshot of these reveals a concern for measures that recognise the distinct human rights of First Nations peoples, the need to address questions of sovereignty and historical wrongs and, finally, the need to ensure that a treaty or treaties contain provisions that enable an ongoing process of review, development and protection.

<sup>303</sup> Cherbourg 2019.

<sup>304</sup> Roma, December 2019.

<sup>305</sup> Brisbane, November 2019.

<sup>306</sup> Brisbane, November 2019.

<sup>307</sup> Mt Isa, November 2019.

<sup>308</sup> Sharon Smith, Submission No. 4,1.

## Sovereignty, rights, governance and capacity building

The issue of sovereignty was raised throughout the engagement process. Where some issues may have been a murmur by comparison, the importance of sovereignty and the need to protect and recognise it through the Path to Treaty process amounted to a roar. First Nations peoples were adamant in their position that at no time had they ever relinquished, ceded or otherwise diminished their sovereignty.

*“Treaty does need to acknowledge sovereignty. Sovereignty should not be a dirty word. We have continued from 60,000 years until now. Laws and customs haven’t changed by and large. We still practice our own form of sovereignty because it is in our own minds; passing our own culture to future generations; sovereignty is about sharing power.”<sup>305</sup>*

*“Sovereignty is around sharing power and sharing sovereignty; acknowledging that we have been here for all time and that we are cohabited here now. White fellas won’t go anywhere nor will the black fellas—to turn the page there must be a more sophisticated way. Sharing the power is the way around that.”<sup>306</sup>*

Throughout the community discussions, participants indicated that they want a treaty to acknowledge this fact and held some concerns about what risks were posed to their sovereignty through entering into a treaty or treaties.

With the knowledge that compromise would be an inevitable part of negotiation, many proclaimed that maintaining their sovereignty was non-negotiable and ceding sovereignty would be a bridge too far for them if this was ever asked of them:

*“It’s about sovereignty. We’ve never ceded it in the first place. As an older person, are we actually giving up the idea of sovereignty by signing a treaty? In my mind, a treaty would have to include the concept of sovereignty.”<sup>307</sup>*

The importance of sovereignty was also an issue raised by non-Indigenous Queenslanders, who identified the role that they could play in helping to realise this fact through a treaty process and go some way to actually strengthening the relationship between themselves and First Nations peoples:

*“We have the opportunity to recognise their sovereignty of this state, to recognise that they have never ceded this sovereignty and to acknowledge their ongoing social, cultural, historical connection to our state, Queensland.”<sup>308</sup>*

Insofar as treaty concerns the rights of First Nations peoples, there was a significant view put forward that the basis of any treaty discussions and the design of a treaty itself must be based on human rights:

*“If we’re going to be discussing treaty, it needs to be rights based. In legislation. A conversation about treaty involves international laws, rights and recognition.”*<sup>309</sup>

*“If we are going to be having a discussion about treaty, it must be rights based under the United Nations Declaration on the Rights of Indigenous Peoples. The Declaration was a combination of Indigenous peoples over 25 years all over the world coming together coming together in Geneva and New York, synthesize what is important to them and actually taking the time to put it into words. If we are going to have conversation about treaty, we need to understand the lexicon of rights, rights can be given by state parliaments and taken away. International law is a growing body of law; there would have been no Mabo judgment if there was no international law. So, if we are going to be having a conversation about treaty, we need to first understand rights that give recognition, rights that provide redress, and then we can consider any warm and fuzzy concepts like reconciliation.”*<sup>310</sup>

*“International instruments have been the only way to hold people to account when all else fails at a national level or a state level, therefore a rights-based framework is the key.”*<sup>311</sup>

Moving beyond the need for a rights-based approach, many participants wanted a treaty or treaties to either strengthen or provide for the better realisation of their rights, across all aspects of their lives:

*“Treaty is meaningless if it doesn’t address the day-to-day challenges, if it doesn’t enliven and improve our social, economic and cultural rights.”*<sup>312</sup>

*“It’s about supporting our cultural rights to economic development on our land because I’m thinking native title doesn’t really give us any economic benefit. We know we’re not going to be given our land back – but where are the benefits? We’ve received no benefit from the use of our land. The crumbs. We’re tired of fighting for the crumbs that fall off the table. Want to be recognised as sovereign owners [for] treaty to give us [a] larger chunk of economic benefits that’s being paid to government and everyone else.”*<sup>313</sup>

*“Our mobs need to be educated in governance, self-governance to run things suited to our people. Under a treaty it would have to be us deciding how to govern and support ourselves.”*<sup>314</sup>

*“Treaty means building economic growth for our own people.”*<sup>315</sup>

309 Brisbane, November 2019.

310 Brisbane, November 2019.

311 Brisbane, November 2019.

312 Thursday Island, November 2019.

313 Townsville, October 2019.

314 Townsville, October 2019.

315 Mount Isa, November 2019.

316 Thursday Island, November 2019.

317 Birdsville, November 2019.

318 Cairns, October 2019.

319 Ipswich, November 2019.

320 Brisbane, October 2019.

321 Brisbane, October 2019.

322 Weipa, October 2019.

323 Bamaga, December 2019.

*“I am thinking about the future generations here. Time to bend that law and put it into action with our culture and traditions.”*<sup>316</sup>

It is evident that a rights perspective is critical to tackling problems in education, health and economic development. This further justifies the need for a treaty to consider the jurisdiction of First Nations peoples and communities; that is, the right to control resources and exercise decision-making power. Some saw this is the fundamental requirement and one that goes to the source of the problem to make a difference to First Nations disadvantage:

*“Ownership of our own authority e.g. more governance to control access. having the power to tell our song lines, culture through programs... A treaty provides that authority to negotiate.”*<sup>317</sup>

*“Must recognise cultural governance and acknowledge that there are cultural protocols already in place. Aboriginal and Torres Strait Islander lore provides this governance.”*<sup>318</sup>

Many participants feel that their knowledge and understanding of disadvantage are best understood by First Nations peoples; specifically, those who have first-hand experiences of the problems. As a result, participants voiced the passing of knowledge to future generations, so that solutions can focus on addressing the cause of problems, rather than just their symptoms, is critical:

*“Important to consider what they are going to pass onto their kids—not just tangible. Example handing over land to children—culture in education and passing on culture should be in a treaty—knowledge land culture important to hand down to future generations. No amount of money or land can achieve this.”*<sup>319</sup>

*“It’s the obligation of people to educate their families.”*<sup>320</sup>

A range of ways that First Nations peoples can self-determine their own solutions have been suggested by participants. This includes:

*“Citizens’ assembly—community members elected.”*<sup>321</sup>

*“There needs to an election process by the local community.”*<sup>322</sup>

*“The formation of a Congress to work together to, ‘unravel the acts’ on this, community by community.”*<sup>323</sup>



Brisbane consultation session, October 2019.

Nonetheless, in saying this there are concerns about the increasing responsibilities and pressures that are being placed on First Nations peoples, particularly those entering into shared agreements with limited resources. Many feel that a treaty needs to include the resourcing of capable governance that is required to ensure self-determination and economic empowerment:

*“The community needs a support/pathway for community building... an economic base.”<sup>324</sup>*

Sometimes the issues are not only directed at government controlling funds but a specific appointed group or individuals that control how funding is distributed across the community:

*“We need confirmation from native title groups to receive funding and services... a Treaty can help negotiate these issues; how much this can be simplified by having a signed agreement to resolve these issues. How did we get to this in our communities?”<sup>325</sup>*

Further to this, it was highlighted that to resource the new directions of partnerships and agreement requires skills, staff and legitimate support for First Nations to meet on an even playing field with government.

Perhaps because of this, there is such a focus by many of communities on developing the leadership and education of the youth and ensuring that they are well equipped with the skills, knowledge and ability to challenge and provide for better solutions that will actually make a long-term difference:

*“Young people should be sitting in and talking rather than older people. Go into the school and have youth discussions about the issues. Youth should be a higher priority.”<sup>326</sup>*

*“Include youth— need to be a part of the conversation and empowerment of young. Empower a village—give them a platform and prepare them.”<sup>327</sup>*

*“We talk about the history and the things we’ve been involved in over the years. Things like self-determination still need to be involved with Indigenous people having the power to make decisions—how children are raised, resources taken from land—used and reinvested.”<sup>328</sup>*

A treaty could therefore assist the futures of First Nations peoples through the inclusion of approaches that could nurture and support the leadership and capability—such as through a First Nations Institute—of First Nations youth and future generations.

Some short-term issues were raised during the consultation. These issues relate to a range of things including repatriation, compensation for war veterans, identification of mass graves. One major theme was access to Country:

*“Access to fishing, people unhappy they can’t access, social/recreation traditional access rights and practices.”<sup>329</sup>*

*“Out here in Barcaldine it is large tracts of freehold land (Aristocracy). And that is why we have so much freehold land... but there is also good people and good stories that have been told. It is all about how we reconnect... and there is that relationship sharing between those two... only a handful or one or two who made that happen. Protection and preservation of cultural sites—issue of access to land along songlines.”<sup>330</sup>*

*“Sustainable protection and ongoing care for Country e.g. ranger program, National Park.”<sup>331</sup>*

A number of communities also mentioned the issues surrounding the Child Protection services, specifically with reference to Blue Card concerns:

*“Blue card, can’t get one because of past incidents with police and that was years ago; this white fella law needs to change.”<sup>332</sup>*

This reflects some specific cultural and local issues that are of importance to communities, and while a treaty is something that aims to change the relationship between the Queensland state and First Nations peoples, there are some very pressing matters that communities are dealing with in the here and now.

### Elements for future considerations

Regarding the mechanics of a treaty, many of those who participated in the face-to-face engagements identified the need for adequate protections to be put in place to safeguard the content and existence of a treaty. Some people were specifically concerned about the need to include dispute resolution mechanisms as well as build in processes of review, whilst others suggested the need for a means of dealing with government breaches or acts of non-compliance:

*“Things we’d like to see included: how to deal with disputes under treaty, mechanisms for handling what happens if/when government breaches treaty.”<sup>333</sup>*

*“A treaty needs to be an evolving living document that changes with the times.”<sup>334</sup>*

*“Review mechanism—we need to monitor the progress of Treaty—no point in just having one if we are not seeing real change.”<sup>335</sup>*

<sup>324</sup> Birdsville, November 2019.

<sup>325</sup> Birdsville, November 2019.

<sup>326</sup> Ciarns, October 2019.

<sup>327</sup> Logan, December 2019.

<sup>328</sup> Townsville, October 2019.

<sup>329</sup> Birdsville, November 2019.

<sup>330</sup> Barcaldine, November 2019.

<sup>331</sup> Roma, December 2019.

<sup>332</sup> Cunnamulla, November 2019.

<sup>333</sup> Brisbane, November 2019.

<sup>334</sup> Brisbane, November 2019.

<sup>335</sup> Weipa, October 2019.

**Q5** What needs to be done to support truth-telling as part of this path to treaty?

*“Under treaty if government breaches the court would tell you that government is infallible (as the Crown is infallible under the Constitution). Therefore, there needs to be a mechanism included to bring up things to resolve them. There should be resources for our mob to talk about these things for our mob.”<sup>336</sup>*

Other critical considerations regarding treaty were also raised in relation to accessibility, durability and flexibility:

*“Interpretation is a big thing. A treaty must be easy enough to explain to community so they understand and for it to be transferrable to different age groups and different communities. Language must be simple enough for mob to understand.”<sup>337</sup>*

The collection, storage and access of and to data, was also another additional concern raised:

*“find it hard to access information... I am just a youth worker... but I don’t have the resources to help youths and research it [their history] for them... have to just go off what the internet goes off... and they can access that but they are shy or unsure about reading up on this stuff. It is all about having that contact with the community and I am new in Roma... and even I am [finding it] hard to find the resources... don’t get me wrong I have been going out there and meeting people.”<sup>338</sup>*

*“Cultural integrity—avoiding misuse of Indigenous knowledge/info.”<sup>339</sup>*

One participant highlighted the issues around not being able to access their own data:

*“With the State Library of Queensland they hold copyright over our Elders interviews. This isn’t right this belongs to us. Audio tapes and access to these.”<sup>340</sup>*

In Thursday Island it was said that Elders are not engaged in the high school in a way that would enable them to prepare the next generation of leaders. A Torres Strait Islander Institute, (or research centre) to do this work was proposed and supported by others. The institute could focus on knowledge production work in relation to cultural knowledge such as genealogy and kinship systems, language and cultural governance. The institute could build the leadership, identify and create capabilities for the work leading up to treaty negotiations and after treaty. It was also acknowledged that there should be a satellite campus on the mainland to provide access to mainland Torres Strait Islanders:

*“I want to see an Institute of the Torres Strait—one here and one on the mainland. Knowledge production work is important, and we should tell the world about us.”<sup>341</sup>*

Perhaps one of the most significant pieces of feedback received throughout the engagement process was in relation to the issue of truth-telling. First Nations peoples and non-Indigenous Queenslanders alike were resounding in their desire for the State to undergo a comprehensive process of truth-telling as an integral part of the treaty process.

One forum participant powerfully articulated what truth-telling could mean across the state, through embracing First Nations’ cultures and history and acknowledging the shared history of Queensland:

*“It is more than just fitting Aboriginal history into Australian history. It is telling 60,000 years of history.”<sup>342</sup>*

Many saw truth-telling as an important precursor to treaty and identified the need for this to occur on a state, regional and local basis through measures such as school curricula, public forums and monuments and the recognition of First Nations peoples place names.

*“Maybe we need to start with some serious truth-telling to expose, and hopefully heal, the trauma in the Indigenous community from this mistreatment before even attempting a treaty.”<sup>343</sup>*

*“What happened to our peoples is not even spoken about in schools. How can we even be talking about a treaty before that is recognised? We need education first. Educate them how we worked for tea and sugar. Dollars fell in our hands and we started to divide.”<sup>344</sup>*

Importantly, some people were already starting to identify existing opportunities to engage in truth-telling at the local level. This was evident in the discussion with stakeholders at Bamaga, who talked about the opportunity for local truth-telling to coincide with Encounters 2020 (the visit of the replica *Endeavour* to Possession Island). The group suggested that any enmity they feel about ‘celebrating’ the possessing of their lands by the British Empire could be reframed as an opportunity to strengthen truth-telling.

Truth-telling was seen by many as a means of moving forward by looking back, as opposed to attributing blame or instilling guilt, but instead about laying bare the true history of Queensland for all to see and hear. There was a great sense from members of the non-Indigenous community who attended the forums that there was so much that was still untold and that bringing this to light was much needed to raise awareness, as well as healing.

<sup>336</sup> Brisbane, November 2019.  
<sup>337</sup> Brisbane, November 2019.  
<sup>338</sup> Roma, December 2019.  
<sup>339</sup> Logan, December 2019.  
<sup>340</sup> Mitchell, December 2019.  
<sup>341</sup> Thursday Island, November 2019.  
<sup>342</sup> Ipswich, November 2019.  
<sup>343</sup> Brynn Matthews, submission no.19, 1.  
<sup>344</sup> Mount Isa, November 2019.

*“I wish to add my support to the Path to Treaty which the Queensland Government is embarking on. As someone who is over 60 years of age and educated in Queensland, my school education presented a very narrow and erroneous history of what had occurred in the colonisation of Australia. It was not until I was an adult at university that I gained a more accurate understanding of what had occurred...”<sup>345</sup>*

*“Truth-telling needs to be a part of this process and so that white Australia can hear the true story of our history. Only through a just settlement through the treaty process can we as a community start to right the wrongs of the past and move forward in addressing the disadvantage that First Nations people continue to experience.”<sup>346</sup>*

*“As a Queenslander who was educated in our government schools in the 1960s and 1970s, I was taught lie upon lie about our First Nations peoples. This was a deliberate tactic of the colonisers and perpetuated by our Queensland and Australian governments since then. As Queenslanders, we now have an opportunity to be one of the first states in Australia to make a treaty/treaties with the Indigenous Peoples of Queensland.”<sup>347</sup>*

*“If I look back on my times I did not learn about Indigenous culture and as a young person I would have really enjoyed the opportunity to learn more and engage and yes for me skills, teaching and the whole education system needs to come on board to give young people that foundation.”<sup>348</sup>*

Unsurprisingly, forum participants recognised that the Queensland Government needed to play a prominent role in any truth-telling process, both in terms of identifying the need for a treaty and how the past is so intimately connected to the present.

*“When I talk about treaty there is a lot of mistrust. Should the government have to get that trust back before we move forward?”<sup>349</sup>*

*“The climate in the community – all for it – don’t know if community is strong enough to explain the past policies that have negatively impacted, such as poverty, health disparity. Having to explain yourself why it is important this is where the government can step up. Government has a big role to play in reconciliation. We done the wrong thing by this mob. This is part of the truth-telling—need to understand and right some of the wrongs of the past and move on.”<sup>350</sup>*

*“Where is the truth-telling that is being facilitated by the Queensland Government? I think the truth-telling needs to have action steps – where are the ads? Some action steps need to be done by the Queensland Government.”<sup>351</sup>*

<sup>345</sup> Bamaga, December 2019.

<sup>346</sup> Phil Pronger, submission no.8, 1.

<sup>347</sup> Sharon Smith, submission no.4, 1.

<sup>348</sup> Roma, December 2019.

<sup>349</sup> Mackay, November 2019.

<sup>350</sup> Mackay, November 2019.

<sup>351</sup> Weipa, October 2019.

<sup>352</sup> Ros Sawtell, submission no.21.

<sup>353</sup> Brynn Matthews, submission no.19, 1.

<sup>354</sup> Queensland Catholic Education Commission, submission, 2.

<sup>355</sup> Thursday Island, November 2019.

<sup>356</sup> Thursday Island, November 2019.

For many, truth-telling was the very basis of a treaty itself and a broad awareness campaign amongst the public was needed in order to win the hearts and mind of non-Indigenous Queenslanders.

It is important to note that many participants referenced the truth and reconciliation processes that had occurred in other countries such as South Africa and Canada as evidence of the transformative power that is possible through truth and healing.

### Limitations of the engagement process

While the vast majority of participants indicated their support for the process, the timeframe for the engagement process was an area of concern at most consultations. Broadly, participants said they felt that they would have liked more time put aside to have these conversations with the community, particularly given what a treaty would mean for the state:

*“I applaud this journey being undertaken by the Queensland Government, although community members I have spoken with are unnerved by the speed of the consultation, so I watch with anticipation at how the nations across this state view a single pathway to treaty.”<sup>352</sup>*

*“I attended the workshop on this in Cairns and it became very obvious that the First Nations had little reason or enthusiasm to trust any ‘path to treaty’ created by the Qld government. Any progress will require a lot more discussion and consultation over an extended period than the current process provides.”<sup>353</sup>*

*“A treaty... cannot be one-sided. The whole Queensland community needs to feel confident that the treaty is the product of genuine and widespread consultation...”<sup>354</sup>*

*“When you come to Torres Strait you need to visit all of the islands and get the voice of the Torres Strait.”<sup>355</sup>*

These sentiments reflect broadly the Treaty Working Group’s own concerns about the timeframe for engagement, which they openly acknowledged throughout the public sessions. However, despite these views, there was also an acknowledgment that it was important to seize the opportunity provided by the Path to Treaty process whilst it presented itself and that these considerations would be an important factor in any process moving forward:

*“This is a good opportunity to have the treaty conversation— from me take opportunities as they are offered to us.”<sup>356</sup>*



Hon Dame Quentin Bryce, Eminent Panel meeting, August 2019.



Brisbane consultation session, October 2019.



Townsville consultation session, October 2019.



Handover of the recommendations report, February 2020.



Caboolture consultation session, December 2019.



Dr Jackie Huggins, Eminent Panel meeting, August 2019.

With this in mind, many participants still discussed the need for broader discussions amongst members of their respective communities, particularly before any treaty or treaties are signed.

It should be noted that whilst there was broad support for treaty within the community, some who attended the engagements also brought a healthy degree of scepticism and cynicism about the prospect of a treaty being delivered or what it might mean giving up:

*“Treaty has got to be based on trust and truths. How do you expect me to look someone in the eye who has lied to me and our people so many times and talk about a treaty when there’s still so much hurt? Our people have been lied to so many times we don’t know what or who to believe.”<sup>357</sup>*

357 Mt Isa, October 2019.  
 358 Thursday Island, November 2019.  
 359 Cairns, October 2019.  
 360 Brisbane, November 2019.

*“We really need to know what the project is, what do we have to give away now?”<sup>358</sup>*

*“We’ve seen this so many times before. Government have given tokenistic gesture after gesture, consultation after consultation in the past. Outside of those discussions, real choices affecting our people are made in closed rooms by people with agendas not our own.”<sup>359</sup>*

*“You want a treaty, but as a black person you want to know that it’s solid and stays there in stone. Not another change of government or direction, where they say something to us and just take it away again.”<sup>360</sup>*



## 5. CONCLUSIONS

*The Treaty Working Group's Terms of Reference required it to report to the Eminent Panel, outlining its recommendations and advice on what a treaty might mean for Queensland including timing, process, and next steps.*

From the outset, the Treaty Working Group was very much aware that perspectives regarding a treaty or treaties process were going to be mixed. For some, it means addressing 'unfinished business,' that goes some way to acknowledging the dispossession and sovereignty of First Nations peoples. For others, it is a process with which to heal and unify First Nations peoples and non-Indigenous Queenslanders. Others expressed the need for a treaty to provide a lasting and equitable means for redress for past injustices, particularly regarding dispossession and theft of land.

The great majority of people who attended the public meetings (more than 1,000), provided submissions (38) and completed online surveys (331) were in favour of continuing the conversation about treaty, leading to the negotiation of treaty or treaties between First Nations and the Queensland Government. They expressed their hopes that a treaty or treaties could enable honest and genuine engagement between First Nations peoples and government. They said they wanted a properly resourced process for treaty making in Queensland supported by legislation based on the recognition of the inherent rights of the First Nations peoples. The United Nations Declaration on the Rights of Indigenous Peoples was often cited as the minimum standard needed to underpin the legislation and the treaty framework.

Participants asserted that First Nations sovereignty was never ceded and continues despite the disastrous disruption to their societies caused by colonisation and dispossession, attempted extermination and the so called 'protection' and assimilation policies. They wanted this to be acknowledged by the Parliament and the people of Queensland.

## Truth-telling

Participants told the Treaty Working Group that any treaty must be based on truth and the true history of their dispossession, that opportunities must be provided for this truth to be told and that it must be shared with non-Indigenous Queenslanders. They particularly wanted this truth to be mandated as part of the curricula of all education systems so that it is never forgotten.

The Treaty Working Group considered examples of truth-telling in different parts of the world from which Queensland can take some lessons on how to confront its past.

Firstly, the establishment of the Truth and Reconciliation Commission in South Africa paved the way for the healing of that nation, with the Justice Minister at the time, Mr Dullah Omar saying that:

*“... a commission is a necessary exercise to enable South Africans to come to terms with their past on a morally accepted basis and to advance the cause of reconciliation.”<sup>361</sup>*

Secondly, the Treaty Working Group noted that the German people confronted their past by making it mandatory in the curricula to teach children about the Holocaust and the Nazi era.<sup>362</sup> It is now a crime in Germany to deny the Holocaust ever happened.<sup>363</sup>

The anniversary of the liberation of Auschwitz, 27 January, is now a national day of remembrance in Germany, while the United Nations dedicates that day as International Holocaust Memorial Day.<sup>364</sup>

Finally, the Treaty Working Group considered the Truth and Reconciliation Commission (TRC) of Canada, which provided those directly or indirectly affected by the legacy of the Indian Residential Schools system with an opportunity to share their stories and experiences.<sup>365</sup>

Between 2007 and 2015, the TRC travelled to all parts of Canada and heard from more than 6,500 witnesses.<sup>366</sup> The TRC also hosted seven national events across Canada to engage the Canadian public, educate people about the history and legacy of the residential schools system, and share and honour the experiences of former students and their families.

The TRC created a historical record of the residential schools system. As part of this process, the Government of Canada provided over five million records to the TRC. The National Centre for Truth and Reconciliation at the University of Manitoba now houses all of the documents collected by the TRC.

In June 2015, the TRC held its closing event in Ottawa and presented the executive summary of the findings contained in its multi-volume final report, including 94 'calls to action' (or recommendations) to further reconciliation between Canadians and Indigenous peoples.<sup>367</sup>

Considering these examples, the Treaty Working Group proposes a Truth and Healing Commission with powers to conduct hearings, compel witnesses and documents, take evidence, conduct research and report to the Queensland Parliament.

<sup>361</sup> See *South Africa History Online*, available online at <https://www.sahistory.org.za/article/truth-and-reconciliation-commission-trc-o> (accessed 23 January 2020).

<sup>362</sup> M Vitale and R Clothey (2019) *Holocaust education in Germany: Ensuring relevance and meaning in an increasingly diverse community*, *Forum for International Research in Education*, Vol.5, (1), pp 44-62, available online at: <https://files.eric.ed.gov/fulltext/EJ1207646.pdf> (accessed 24 January 2020).

<sup>363</sup> G Lewy (2014) "Outlawing Genocide Denial: The Dilemmas of official historical truth", Ch 2, *Holocaust Denial Law in the German Federal Republic*, p8-50, University of Utah Press.

<sup>364</sup> See *Auschwitz-Beraneau museum*, available online at: <http://auschwitz.org/en/home-page75/>, (accessed 24 January 2020).

<sup>365</sup> See *Truth and Reconciliation of Canada website*, available online at: <https://www.rcaanc-cirnac.gc.ca/eng/1450124405592/1529106060525>, (accessed on 23 Jan 2020).

<sup>366</sup> See *Truth and Reconciliation of Canada website*, available online at: <https://www.rcaanc-cirnac.gc.ca/eng/1450124405592/1529106060525>, (accessed on 23 Jan 2020).

<sup>367</sup> *Truth and Reconciliation Commission of Canada (2015) Honouring the truth, reconciling for the future: summary of the final report of the Truth and Reconciliation Commission of Canada*, p319.

The Treaty Working Group proposes that the First Nations Treaty Institute be given the legislated authority of a Commission of Inquiry in order to: conduct hearings across Queensland; receive submissions; conduct research; make findings; and report to the Queensland Parliament. Throughout this process, the Institute should: support witnesses; provide a repository of the material gathered during the hearings; in partnership with relevant service providers, develop a holistic healing process for First Nations People to support recovery from their lived experiences and intergenerational trauma; and develop curriculum content based on the true history as a result of these findings for use by the various educational authorities in Queensland. This content should be included in the curricula of all educational institutions in Queensland.

## First Nations Treaty Institute

The Treaty Working Group proposes an independent First Nations Treaty Institute (the Institute) established by legislation to support treaty-making, including truth-telling, rebuilding First Nations and the facilitation, negotiation and implementation of treaties. It is not proposed that this Institute will negotiate treaties itself, but that it provides the institutional support for truth-telling and treaty-making to proceed. This is based broadly on the British Columbia (BC) Treaty Commission, an independent body responsible for facilitating independent treaty negotiations with First Nations in BC, Canada.

As noted above, the first task of the Institute would be to commence the truth and healing process in accordance with the very strong consensus from the community engagement process that truth-telling must precede treaty.

The Treaty Working Group proposes that the Institute support the rebuilding of First Nations by: building their capability and their communities' capability to engage in treaty-making and be self-governing; supporting the development of First Nations' governance models by and with First Nations; and conducting research and developing as a centre of excellence for First Nations treaty making in Queensland.

The First Nations Treaty Institute would support the path to treaty by: supporting First Nations to engage in treaty making; continuing the Path to Treaty conversations by facilitating discussions at the local level, between First Nations and non-Indigenous Queenslanders, and at the governmental level; engaging and partnering with Academia/Universities, Business Research Bodies, Indigenous Research Bodies, Think-Tanks, at International, National and Regional levels to strengthen and sustain treaty-making; and convening regional and state-wide summits of First Nations to share their experiences with treaty-making.

The first Council of the Institute would be appointed by the Governor in Council following a transparent process of extensive consultations with Queensland First Nations leaders. This is critical to ensure First Nations peoples support for and engagement with for the work of the Institute. Subsequent Councils should be appointed by the representative mechanism referred to in the next section once it is functioning.

At this time, the Treaty Working Group does not propose a Queensland First Nations Assembly along the lines of the one recently elected in Victoria, the First Peoples' Assembly of Victoria. We believe that this needs to evolve out of a properly conducted consultation process across Queensland.

Questions that need to be considered include, but are not limited to: How should this mechanism be constituted? Should it only represent First Nations with Native Title determinations? What about those with pending Native Title claims? Should it include other important Aboriginal and Torres Strait Islander organisations, e.g. Indigenous Shire Councils, Peak bodies? Should there be elections or a nomination process? Should there be guaranteed gender equality? How can the integrity of the mechanism as the legitimate voice of First Nations peoples in Queensland be assured? How would it relate to any national, regional/local bodies established under the Commonwealth's Indigenous Voice co-design process? How should the interests of the many First Nations peoples forcibly removed from their traditional lands and now living on the Country of other First Nations peoples be included? What about the Stolen Generations?

The First Nations Treaty Institute should conduct these consultations and develop a representative mechanism to advocate the rights and interests of First Nations peoples at the State level. It is critical that this mechanism be developed with some alacrity as we see it having responsibility for:

- negotiating a treaty framework underpinned by the United Nations Declaration on the Rights of Indigenous Peoples with the Queensland Government – the framework to provide a mechanism for First Nations, Confederations of First Nations and their communities to negotiate and enter into treaties with the Queensland Government
- representing the interests of First Nations and their communities through-out the treaty making process
- negotiating a comprehensive settlement agreement with the Queensland Government as redress for past wrongs, including colonisation and dispossession
- partnering with the Queensland Government to develop, implement and review an Action Plan to ensure all laws and policies which affect First Nations peoples conform to the UN Declaration on the Rights of Indigenous Peoples.

## First Nations Treaty Future Fund

During the conversations, participants said they wanted redress for colonisation and dispossession and that the process of treaty-making and implementation must be properly resourced.

The Treaty Working Group considered a number of options for redress and resourcing to support treaty-making and treaty implementation. These included:

- 1. NSW Aboriginal Lands Council**  
Transfer of land and a process for land claims plus 7.5 per cent of land tax for 15 years.
- 2. Northern Territory**  
A mining royalty equivalent equal to a percentage of mining royalties.
- 3. Noongar Agreement**  
A package of funding totalling about \$1.3 billion over 12 years in exchange for relinquishment of native title claims.

On balance, the Treaty Working Group supports a proposal for redress, voiced at many meetings. However, the Treaty Working Group does not wish to pre-empt any treaties, agreements or settlements reached by the Queensland Government with First Nations.

Nevertheless, the Treaty Working Group strongly recommends that the institutional structure and processes recommended in this report be properly resourced, with allocations guaranteed for a minimum period of ten years.

Consequently, the Treaty Working Group proposes the establishment of a First Nations Treaty Future Fund into which the State Government should make guaranteed annual allocations for a minimum period of ten years beginning in 2020–2021. These annual allocations must be sufficient to meet the following:

- the operational costs of the First Nations Institute
- the cost of the Truth and Healing process
- the operational costs of the mechanism for First Peoples representation
- support for First Nations capacity building to engage in treaty making
- support for First Nations treaty negotiations
- engagement with the Queensland community
- an annual allocation for capital investment sufficient for the fund to become self-sustaining over time.

The Treaty Working Group proposes that investments from the fund must be informed by an ethical investment strategy to ensure they are not used to disadvantage or harm First Nations peoples.

## Treaty Tribunal

One of the often repeated refrains during the conversations was the need for an independent umpire to oversee the treaty process. Noting that treaties between colonial authorities and Indigenous peoples in other countries had often been broken by governments, territories whittled away, and treaty rights ignored, there was an insistence that any treaties negotiated in Queensland must be monitored by an independent mechanism. Therefore, the Treaty Working Group supports the establishment by legislation of an independent Treaty Tribunal to oversee the treaty making process, monitor compliance, arbitrate and resolve disputes and review treaties over time.

## Preparing the groundwork for treaties

It was recognised that the Path to Treaty will be a long one and much needs to be done to prepare the ground to support treaty-making:

- a public awareness campaign to build public knowledge of and support for a treaty. To this end, an engagement strategy is recommended to progress the momentum for treaties
- capability-building of First Nations to become treaty ready
- capability-building within government to support treaty-making
- as there is no mechanism currently in place to represent the First Nations peoples in the negotiating of an overarching treaty framework, scoping must be done to support the development of such a mechanism
- negotiations around reparations as a means of redress for past wrongs
- further discussion on the question of whether there should be a single treaty or many treaties—most participants appeared to support a state-wide negotiated treaty framework and treaties negotiated at the level of First Nation/s and/or communities
- if treaties are negotiated at the level of First Nations, how they can account for the interests of First Nations peoples living off Country.

The Treaty Working Group believes there is a need to build on the momentum already generated by the Path to Treaty conversations. Despite the initial scepticism, participants expressed hope that the time had finally come for their inherent rights to be acknowledged, the history of dispossession and colonisation and its disastrous consequences to be told, and treaties based on the rights elaborated in the UN Declaration on the Rights of Indigenous Peoples providing for real decision-making and control over their lives to be negotiated.

The Treaty Working Group proposes transitional arrangements to continue and build on this momentum and to support the establishment of the First Nations Treaty Institute.

Firstly, the Treaty Working Group believes that there needs to be a body to monitor the implementation of the recommendations, specifically the legislation and institutional structures recommended to support treaty making in Queensland.

Secondly, there is a need to build broader community support for the treaty and help build a shared, respectful understanding about treaty. The Treaty Working Group suggests that the Eminent Panel, with the support of Treaty Working Group members be given the responsibility for both these tasks up to the point when the First Nations Treaty Institute is established.

## Treaty or treaties?

There were two issues discussed during the conversations around the making of treaties in Queensland which, while separate, impact on each other. They each provoke layers of questions which, because of their nature and the complexities, require further consideration.

The first question was whether there would be 'one treaty' or would there be 'many treaties'.

The main topic of discussion in relation to the 'one treaty' concept was who would negotiate and sign any treaty on behalf of First Nations peoples in Queensland. When this was discussed, it was suggested by some that there would have to be some type of representative structure in place to firstly, negotiate a statewide treaty and secondly, to sign the negotiated treaty on behalf of First Nations peoples.

There was also support for the negotiation of a statewide treaty making framework based on the rights elaborated by the United Nations Declaration on the Rights of Indigenous Peoples. It is the view of the Treaty Working Group that this is the appropriate way forward, but the work needed to progress this would be the responsibility of the First Nations Treaty Institute.

The 'many treaties' concept raises a tier of issues that need to be treated sequentially depending on the response to each question. For instance, there was broad support for local treaties, which include issues relevant to a particular area. However, the next tier of questions would be whether a local treaty would be area-based around traditional ownership.

## What about First Nations peoples living off Country?

Treaties based on traditional ownership created the most complexities with which to deal in treaty-making. The main contention was that if a treaty were to be negotiated locally with traditional owners, what would be the place for people belonging to other First Nations who reside and have resided within those traditional boundaries for many generations. Given the nature of the dispersal of First Nations peoples away from their traditional Country this will be one of the most perplexing issues to deal with for treaty making.

However, because of these issues and questions, it would be a mistake to rule out the option of treaties with traditional owners because the concept of treaties based on traditional ownership received strong support during the consultations and is the logical consequence of treaty making.

From the outset, this process has been identified as the first step in ascertaining the views of First Nations peoples and the broader Queensland public about what a treaty means to them.

As the initial stepping-stone, this process has had as its primary aim, hearing from First Nations peoples and non-Indigenous Queenslanders about their aspirations regarding a treaty, as opposed to designing a treaty in and of itself.

This gave a level of comfort to participants, whom, despite their overwhelming support for a treaty or treaties, identified the need for more time to have wider discussions within the community before such a process begun in earnest.

## Guiding principles

The extensive feedback provided to the Treaty Working Group has helped us to identify a number of Guiding Principles to assist the next steps towards progressing a treaty process in this state.

Indeed, the Treaty Working Group is strongly of the view that, regardless of where the state is up to regarding treaty negotiations, whether they commence this year, next year, or within the next ten years, the following Principles should inform the development of any treaty process.

### Rights-based approach

The United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) is the most comprehensive instrument recognising the human rights of Indigenous peoples throughout the world. Collectively, the Declaration and the recently enacted *Human Rights Act 2019* (Qld),<sup>368</sup> provide an important framework within which to progress treaty discussions in the state of Queensland. The full text of the Declaration is attached to this report at Appendix E.

The Treaty Working Group proposes that a rights-based approach (elaborated at Appendix D) should be at the heart of any treaty process with First Nations peoples and be used to specifically design, deliver, monitor and evaluate ongoing treaty development.

The Treaty Working Group notes that, in agreeing to legislate to provide for First Nations peoples in Queensland to enjoy the rights in the Declaration, a process to review all laws and policies to ensure they conform with the rights in the Declaration will be necessary. This must be done in cooperation with the representatives of First Nations peoples. Such a process could involve representatives of First Nations peoples, supported by the First Nations Treaty Institute, working in partnership with a specially convened Parliamentary Committee to review laws, regulations, service delivery systems and policies which impact First Nations peoples to ensure compliance with the Declaration. The Treaty Working Group urges the Queensland Government and Parliament to consider this approach.

## Independence of First Nations' negotiations

In accordance with the principles of self-determination, the treaty process must be developed in a manner that is independent of government. First Nations peoples must be free from interference when determining their negotiation positions.

### Evidence base

The development of a treaty will also be grounded in a researched and evidence-based approach that is informed by the most up-to-date material in line with the Australian Institute of Aboriginal and Torres Strait Islander Studies 2012 *Guidelines for Ethical Research in Australian Indigenous Studies*.<sup>369</sup>

The Treaty Working Group notes that, as well as First Nations peoples building their capacity to engage in treaty making, there will be a need for Government and its departments and agencies to build their capabilities to prepare for the changes that will be necessary as a result of it pursuing its commitment to treaty making with First Nations.

<sup>368</sup> *The Human Rights Act (Qld) 2019*, available online at: <https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2019-005> (accessed 22 January 2020).

<sup>369</sup> AIATSIS (2012) *Guidelines for Ethical Research in Australian Indigenous Studies* available online at: <https://aiatsis.gov.au/sites/default/files/docs/research-and-guides/ethics/gerais.pdf> (accessed 13 January 2020).



## 6. RECOMMENDATIONS

*The Treaty Working Group put forward eight recommendations outlined in the following pages.*

*The Eminent Panel formally provided these recommendations—at a ceremonial handover event in February 2020—to the Queensland Government following statewide consultation in 24 communities and engaging more than 1,700 Queenslanders.*

*Above image (left to right): Mick Gooda, Kate Tully, Kenny Bedford, Cheryl Buchanan, Michael Lavarch, the Honourable Jackie Trad MP, Dr Jackie Huggins, Kerry O'Brien, Shane Hoffman, Leon Filewood, Charmaine Foley.*

## 1. Path to Treaty: Overview

- 1.1 That the Queensland Government proceed on a Path to Treaty with the ultimate aim of reaching a treaty or treaties with the First Nations of Queensland.
- 1.2 That the Path to Treaty be conducted using a rights based approach consistent with both the *Human Rights Act 2019 (Qld)* and the *United Nations Declaration on the Rights of Indigenous Peoples*.
- 1.3 That, in order to progress the Path to Treaty the Queensland Government make a Treaty Statement of Commitment to express the Government's intention to further lasting reconciliation with First Nations through the actions detailed in the recommendations below involving:
  - 1.3.1 the establishment of the First Nations Treaty Institute as an independent body to lead the Path to Treaty process
  - 1.3.2 the facilitation of a process of truth-telling and healing
  - 1.3.3 the building of capacity for First Nations to actively participate in the treaty process
  - 1.3.4 deepening the understanding and engagement of the wider Queensland community in the Path to Treaty
  - 1.3.5 the adequate resourcing of these actions through the establishment of a First Nations Treaty Future Fund
  - 1.3.6 the placing before Parliament in the first half of 2020 a Bill to further the Path to Treaty, establish the First Nations Treaty Institute and the First Nations Treaty Future Fund.

## 2. The First Nations Treaty Institute

- 2.1 That principal carriage of the actions required to progress the Path to Treaty be the responsibility of a statutory entity established by an Act of the Queensland Parliament called the First Nations Treaty Institute (Institute).
- 2.2 That the functions of the First Nations Treaty Institute include:
  - 2.2.1 advising and facilitating the development of a treaty making framework
  - 2.2.2 advising on possible representative mechanisms and structures for First Nations peoples
  - 2.2.3 leading a process of truth telling and healing
  - 2.2.4 providing support to build the capacity of First Nations to engage in the treaty making process
  - 2.2.5 supporting the development of governance models suitable for First Nations
  - 2.2.6 engagement with the Queensland community on the Path to Treaty.
- 2.3 That the governance of the Institute be the responsibility of an Institute Council comprising:
  - 2.3.1 of members initially appointed by the Governor in Council and then subsequently
  - 2.3.2 of members directly appointed by First Nations representative mechanisms and structures
  - 2.3.3 a Chief Executive Officer appointed by the Institute Council.
- 2.4 That the Institute recommend to the Queensland Government the representative mechanisms and structures for First Nations provided the recommendation:
  - 2.4.1 has been informed through extensive consultation with First Nations peoples
  - 2.4.2 represents an agreed position of First Nations.
- 2.5 That the First Nations Treaty Institute operate independently of the Queensland Government with reporting to be to the Queensland Parliament.
- 2.6 That funding for the First Nations Treaty Institute be drawn from the First Nations Treaty Future Fund.

### 3. Truth-telling and healing

- 3.1 That the Queensland Government facilitate and resource a comprehensive process of Truth Telling to chronicle the history of First Nations peoples prior to British colonisation of Queensland, the history and impact of colonisation on First Nations peoples and the more recent history of Queensland in relation to First Nations peoples.
- 3.2 That, as its first priority, the First Nations Treaty Institute be commissioned and empowered (e.g. the ability to compel the production of documents and witnesses) to conduct the process of truth-telling and to support participants and witnesses involved in the process.
- 3.3 That healing and reconciliation be supported through the process with relevant service providers auspiced to provide support to First Nations people to recover from their lived experience and impacts of intergenerational trauma.
- 3.4 That the resources, materials and testimony gained from the process be used:
  - 3.4.1 to inform popular and academic understanding of First Nations and the history of colonisation
  - 3.4.2 as source material for the development of mandatory educational curricula.

### 4. Capacity building

- 4.1 That First Nation peoples be supported to engage in the Path to Treaty with the aim that future discussions and negotiations on a possible treaty or treaties might occur with the State on an equitable basis.
- 4.2 That the First Nations Treaty Institute develop and administer programs to assist First Nations and their communities to become treaty-ready and support First Nations to develop governance models appropriate for different communities.
- 4.3 That partnerships with Universities and other bodies be fostered through the First Nations Treaty Institute to build resources and expertise available to be called upon by First Nations in strengthening their capacity for treaty discussions and on-going governance.
- 4.4 That the Premier, supported by the Minister for Aboriginal and Torres Strait Islander Partnerships, coordinate preparations within government for the Path to Treaty process.

### 5. Community understanding and engagement

- 5.1 That the Queensland Government undertake in conjunction with the establishment of the First Nations Treaty Institute and in advance of the Truth and Healing process, a community engagement program to promote understanding of the history of First Nations peoples and the Path to Treaty process.

### 6. Implementation: The Path to Treaty Act

- 6.1 That the Queensland Government place before Parliament in the first half of 2020 a Bill to further the Path to Treaty, establish the First Nations Treaty Institute and the First Nations Treaty Future Fund.
- 6.2 The proposed legislation will include acknowledgment that:
  - 6.2.1 First Nations successfully governed their lands, seas, waters and air and associated resources for at least 65,000 years prior to British colonisation of Queensland
  - 6.2.2 colonisation occurred without the consent of First Nations and often against the active resistance of First Nations peoples
  - 6.2.3 First Nations have never ceded their sovereignty and continue to assert sovereignty
  - 6.2.4 colonisation occasioned devastating disruption to First Nations societies and the wholesale dispossession of First Nation Peoples of their lands, seas, waters and air
  - 6.2.5 First Nations' responsibilities for their lands, seas, waters and air continue in accordance with traditional laws and customs
  - 6.2.6 First Nations cultures and knowledge is an enormous resource for Queensland
  - 6.2.7 Queensland seeks to embark on a Path to Treaty in partnership and good faith and consistently, with the recognition of the rights of First Nations peoples as embodied in the *Human Rights Act 2019* and the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration).

## 6. Implementation continued...

- 6.3 The proposed legislation will:
  - 6.3.1 establish the First Nations Treaty Institute
  - 6.3.2 establish the First Nations Future Fund
  - 6.3.3 enable future representative mechanisms and structures to be recognised as participants in the settlement of a treaty framework and as parties to treaties
  - 6.3.4 support the development of appropriate governance arrangements for representative mechanisms and structures for First Nations individually and collectively as required
  - 6.3.5 provide for the Path to Treaty to proceed based on the Declaration (i.e. incorporate into the Act specifics such as self-determination and free prior and informed consent, fairness and equality, good faith negotiations, mutual benefit and sustainability, transparency and accountability)
  - 6.3.6 enable the future creation of a Treaty Tribunal to oversee the treaty making process, monitor compliance, arbitrate and resolve disputes and review treaties over time
  - 6.3.7 enable the future adoption of the Treaty Framework as facilitated by the First Nations Treaty Institute and accepted by the Queensland Government and First Nations representative mechanisms and structures
  - 6.3.8 dispute resolution provisions
  - 6.3.9 reporting and other necessary legislative requirements.

## 7. Implementation: Resourcing and creation of the First Nations Treaty Future Fund

- 7.1 That the Queensland Government provide a sustainable and guaranteed financial basis for the Path to Treaty process to proceed.
- 7.2 That a First Nations Treaty Future Fund (Fund) be established into which will be credited annual appropriations for a minimum of 10 years commencing with the Queensland Budget for the 2020–2021 financial year sufficient to be applied to the following:
  - 7.2.1 the operational costs of the First Nations Treaty Institute
  - 7.2.2 capacity building for First Nations
  - 7.2.3 support for the Truth and Healing process and programs
  - 7.2.4 support for representative mechanisms and structures
  - 7.2.5 the costs of First Nations peoples involvement in treaty negotiations
  - 7.2.6 an annual allocation for capital investment sufficient for the Fund to become self-sustaining over time.
- 7.3 That the administration of the Fund be placed with First Nations Treaty Institute with investment of the Funds to be undertaken by the Queensland Investment Corporation informed by ethical considerations provided by the First Nations Treaty Institute.

## 8. Transparency

- 8.1 That the Report of the Treaty Working Group and the advice to Queensland Government of the Eminent Panel be published and made freely available to the public.



## 7. APPENDICES

**Appendix A:** *Terms of Reference, Eminent Panel*

**Appendix B:** *Terms of Reference, Treaty Working Group*

**Appendix C:** *List of submissions*

**Appendix D:** *A rights-based approach*

**Appendix E:** *United Nations Declaration on the Rights of Indigenous Peoples*

### Purpose

The Eminent Panel will:

- Be the public face of the Path to Treaty to promote broad community support, which may include spokespersons duties;
- Provide advice to the Queensland Government, Aboriginal and Torres Strait Islander people, and the Queensland community on a Path To Treaty for Queensland, informed by state-wide consultations;
- Oversee the work of the Treaty Working Group who will lead consultations on the issues identified in the Path to Treaty consultation paper.

### Objectives and scope

The objectives and scope of the Eminent Panel are to:

- Provide direction and support to the Treaty Working Group during consultations on the Path to Treaty in Queensland (for example, providing advice on issues that arise during consultation, guidance on engaging particular sectors of the community, providing feedback on the draft recommendations report).
- Initiate informed discussions among Aboriginal and Torres Strait Islander people, communities and their representatives on what a Treaty might mean for Queenslanders.
- Oversee, and participate in at their discretion, the state-wide consultation undertaken by the Treaty Working Group on the issues identified in the Path to Treaty consultation paper.
- Build broader community support for the Path to Treaty through acting as ambassadors for the Path to Treaty.
- Engage with the Queensland community as spokespeople to help build a shared, respectful understanding about Treaty.
- Provide guidance on what material or expertise would support Queensland Aboriginal and Torres Strait Islander communities participate in the consultation process.

### Membership

The Eminent Panel will consist of up to eight persons directly appointed by the Deputy Premier, Treasurer and Minister of the Department of Aboriginal and Torres Strait Islander Partnerships.

Members will have the necessary technical skills, experience and commitment to lead the Path to Treaty process; represent a bipartisan approach; and include representation from Aboriginal and Torres Strait Islander people and non-Aboriginal and Torres Strait Islander people.

Nominees will be required to undergo suitability checks that include a criminal history check, and identification of any potential conflicts of interest (personal particulars form).

### Terms of membership and remuneration

- Members may be appointed for an initial term to 30 June 2020.
- Members will be remunerated for their time to attend and prepare for meetings based the *Remuneration procedures for part time chairs and members of Queensland Government bodies*, and reasonable travel expenses will be covered.

### Meetings and support

- Members will be appointed on a part-time basis. Travel, including to regional and remote areas, will be required.
- No delegates or proxies for members will be accepted.
- The Department of Aboriginal and Torres Strait Islander Partnerships will provide secretariat support.

### Reporting

The Eminent Panel Co-Chairs to provide a report back to the Minister, by 15 January 2020 which includes:

- The work undertaken by the Treaty Working Group
- The results of consultations and an analysis
- Recommendations and advice on what a Treaty might mean for Queensland including, timing, process and next steps.

### Code of Conduct and confidentiality

Members will be required to sign and comply with a Code of Conduct and confidentiality agreement.

## Appendix B: Terms of Reference, Treaty Working Group

### Purpose

Guided by the Eminent Panel, the Treaty Working Group will:

- Start the conversation with Aboriginal and Torres Strait Islander people, communities and their representatives, and the broader Queensland community, in relation to the Path to Treaty
- Explore key issues and perspectives on a Path to Treaty for Queensland; and
- Provide advice to the Eminent Panel on a Path to Treaty for Queensland.

### Objectives and scope

The objectives and scope of the Treaty Working Group are to:

- Provide technical advice on issues and options for discussion during consultations on the Path to Treaty in Queensland.
- Lead State-wide consultation to engage in a broad conversation with Aboriginal and Torres Strait Islander people, the broader community and their representatives on the issues identified in the Path to Treaty consultation paper.
- Provide advice on building broader community support for the path to Treaty.
- Support engagement with the Queensland community to help build a shared, respectful understanding about Treaty.
- Provide guidance on what material or expertise would support Queensland Aboriginal and Torres Strait Islander communities participate in the consultation process.
- Provide a report back to the Minister, through the Eminent Panel which includes:
  - The work undertaken by the Treaty Working Group
  - The results of consultations and an analysis
  - Recommendations and advice on what a Treaty might mean for Queensland including, timing, process and next steps.

### Membership

The Treaty Working Group will consist of approximately 10 persons with some members directly appointed by the Minister of the Department of Aboriginal and Torres Strait Islander Partnerships and/or the Director-General of the Department of Aboriginal and Torres Strait Islander Partnerships; and a number appointed through an expression of interest process.

Members will have the necessary technical skills, experience and commitment to support the Path to Treaty process; represent a bi-partisan approach; and include representation from Aboriginal and Torres Strait Islander people and non-Aboriginal and Torres Strait Islander people.

Nominees will be required to undergo suitability checks that include a criminal history check, and identification of any potential conflicts of interest (personal particulars form).

### Terms of membership and remuneration

- Members may be appointed for an initial term to 30 June 2020 (with varying levels of engagement).
- Members will be remunerated for their time to attend and prepare for meetings based the *Remuneration procedures for part time chairs and members of Queensland Government bodies*, and reasonable travel expenses will be covered.

### Meetings and support

- Members will be appointed on a part-time basis. Travel, including to regional and remote areas, will be required.
- No delegates or proxies for members will be accepted.
- The Department of Aboriginal and Torres Strait Islander Partnerships will provide secretariat support

The Treaty Working Group to provide a report back to the Eminent Panel in mid-December 2019 which includes:

- The work undertaken by the Treaty Working Group
- The results of consultations and an analysis
- Recommendations and advice on what a Treaty might mean for Queensland including, timing, process and next steps.

### Code of Conduct and confidentiality

Members will be required to sign and comply with a Code of Conduct and confidentiality agreement.

## Appendix C: List of submissions

No.	Date	Author
1	19 August 2019	Muntaba Clan Kalkatungu Tribal Governing Council, Patingo William Doyle
2	24 September 2019	Wobuna Banbari, Yuru Tribal Governing Council
3	30 September 2019	Ross Daniels
4	30 September 2019	Sharon Smith
5	9 October 2019	Wayne Sanderson
6	15 October 2019	Michelle Peile
7	17 October 2019	Cecilia Homerlein
8	23 October 2019	Phil Pronger
9	24 October 2019	Ram Patel
10	26 October 2019	Sammantha Lillie
11	28 October 2019	Paul King
12	1 November 2019	Ray Sambo
13	17 November 2019	Colin Peile
14	22 November 2019	Peace & Conflict Studies Institute Australia, Anne Brown
15	26 November 2019	Gidarjil Development Corporation, Dr Kerry Blackman
16	27 November 2019	Margaret Therese Evans
17	29 November 2019	Wadja Tribal Governing Council, Wagan Guburu
18	29 November 2019	Wagan Guburu on behalf of Townsville Grassroots Community Meeting
19	30 November 2019	Brynn Mathews
20	1 December 2019	Queensland Regional Meeting of the Religious Society of Friends, Duncan Frewin
21	2 December 2019	Ros Sawtell
22	2 December 2019	Queensland Human Rights Commission, Scott McDougall
23	2 December 2019	Val Brown
24	3 December 2019	University of Technology Sydney, Faculty of Law, Harry Hobbs
25	3 December 2019	National Heart Foundation of Australia, Stephen Vines
26	3 December 2019	Griffith University, Nathan and Gold Coast, Humanities Languages and social Science, Professor James Carson
27	5 December 2019	Central Queensland Indigenous Development, Suzi Blair
28	5 December 2019	Sunshine Coast Reconciliation Group Incorporated, Margret Ross
29	5 December 2019	Queensland Catholic Education Commission, Dr Lee-Anne Perry AM, Executive Director
30	6 December 2019	Reconciliation Queensland Incorporated, Peter L Jackson
31	6 December 2019	Kunja Traditional Owner Group, Kymberley Monaghan
32	6 December 2019	Wesley Aird
33	7 December 2019	John Ngailu Whop
34	9 December 2019	John Homan
35	11 December 2019	Cairns and Hinterland Hospital Health Services, Qld Govt
36	13 December 2019	Stephen Mam
37	13 December 2019	Yugara-Yugarapul Aboriginal Corporation, Katharine Wilshire
38	20 December 2019	Queensland Law Society

## Appendix D: A rights-based approach

The United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) is the most comprehensive instrument recognising the human rights of Indigenous peoples throughout the world. Collectively, the Declaration, the United Nations Human Rights Conventions and the recently enacted Human Rights Act 2019 (Qld), provide an important framework with which to progress treaty discussions in the state of Queensland.

A rights-based approach should be at the heart of any treaty process with First Nations peoples and be used to specifically design, deliver, monitor and evaluate ongoing treaty development.

A treaty process that upholds the rights of First Nations peoples will:

- Promote First Nations peoples' rights to self-determination
- Demonstrate respect for and protection of First Nations cultures
- Ensure non-discrimination and equality
- Ensure participation occurs in a manner informed by free, prior and informed consent
- Ensure that the process is accountable.

The establishment of an independent, well-resourced First Nations Institute as recommended by the Treaty Working Group will go a long way to ensuring these rights are faithfully observed during the treaty process.

### Self-determination

The right to self-determination is a core right within the Declaration<sup>370</sup> that outlines the rights of First Nations peoples to:

- Have a **choice** in how they are governed
- Be able to **participate** in decisions that affect them
- Have **control** over their lives and development<sup>371</sup>

A treaty process gives First Nations peoples an important opportunity to enjoy their rights to self-determination, by providing a mechanism for future engagement with government, as well as the identification of shared priorities.

In line with the various articles of the Declaration which go to the inherent right of self-determination, a treaty process should therefore enable First Nations peoples to:

- Determine their own political status
- Exercise autonomy and self-government over matters that affect them
- Participate in decisions through their own representatives and institutions
- Maintain and strengthen their distinct political, legal, social, cultural and economic institutions
- Exercise their rights to belong to particular First Nations communities and nations in accordance with their traditions and customs
- Determine their own priorities within their communities.

<sup>370</sup> Art. 3, *United Nations Declaration on the Rights of Indigenous Peoples*, available online at: [https://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf) (accessed 27 December 2019).

<sup>371</sup> *Australian Human Rights Commission (2010) The Community Guide to the UN Declaration on the Rights of Indigenous Peoples, 3*, available online at: [https://www.umanrights.gov.au/sites/default/files/document/publication/declaration\\_community\\_guide.pdf](https://www.umanrights.gov.au/sites/default/files/document/publication/declaration_community_guide.pdf) (accessed 28 December 2019).

### **Participation in decision making and free, prior and informed consent**

Closely linked to the right of self-determination, is the right of First Nations peoples to participate in decisions that affect them, in a manner informed by free prior and informed consent.

In exercising this right, First Nations peoples must be able to fully participate in the treaty process, which means being able to understand what a treaty or treaties will entail and how it might affect their lives.

This also means that First Nations peoples should not be forced to participate if they do not want to and should be free to decline to engage in the treaty process as a whole if they wish. Where the participation of First Nations peoples does take place, it must occur as a part of a meaningful engagement process, where decisions are not forced or rushed and where information is accessible and provided well in advance of any decision being made.

In order to facilitate this, the Queensland Government should facilitate the prompt delivery of information regarding the treaty process and provide resources for First Nations peoples to access legal advice in order to make an informed decision on the issue of treaty or treaties and what this might mean for their nation.

### **Non-discrimination and equality**

A human rights-based approach to treaty means that all First Nations peoples have a right to participate in discussions regarding the Queensland treaty process.

This approach will not preference the rights of any specific group of First Nations peoples above another. However, it will recognise the need to pay attention to securing the participation of particularly vulnerable groups, such as women, young people, the disabled and the elderly people and those First Nations peoples for whom English is not their first language and Stolen Generation and displaced people.

Resources should be made available to enable as many people as possible to participate in this process and that the nature and form of any information or decisions are delivered in a manner that is accessible and reflective of the participation all participants.

### **Respect for and protection of culture**

A treaty process that upholds respect for and protection of culture will recognise and respect the rights of each First Nation peoples and individuals to their unique cultural identities, including their cultural authority and the right of each First Nations to exercise self-determination.

This will also ensure and encourage the respectful engagement between First Nations and the State.

### **Accountability**

Throughout the engagement process, First Nations peoples emphasised the need for any treaty process to have adequate accountability mechanisms built in. Not only was this intended as a means to monitor treaty progress, but also a way of bringing some balance to the relationship between First Nations peoples and the State.

Consideration should be given to designing a set of standards with which to monitor treaty progress and provide remedies for non-compliance which might provide a strong disincentive for a breach by current or future Queensland governments. This will potentially involve an independent Treaty Tribunal. The Treaty Working Group suggests the First Nations Institute develop a proposal for a Treaty Tribunal to put to Government.

## Appendix E: United Nations Declaration on the Rights of Indigenous Peoples

[without reference to a Main Committee (A/61/L.67 and Add.1)]

### 61/295. United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Taking note of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006,<sup>372</sup> by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples,

Recalling its resolution 61/178 of 20 December 2006, by which it decided to defer consideration of and action on the Declaration to allow time for further consultations thereon, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly,

Adopts the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution.

107th plenary meeting  
13 September 2007

### Annex

#### United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States, Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights<sup>373</sup> and the International Covenant on Civil and Political Rights,<sup>2</sup> as well as the Vienna Declaration and Programme of Action,<sup>374</sup> affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

<sup>372</sup> See Official Records of the General Assembly, Sixty-first Session, Supplement No. 53 (A/61/53), part one, chap. II, sect. A.

<sup>373</sup> See resolution 2200 A (XXI), annex.

<sup>374</sup> A/CONF.157/24 (Part I), chap. III.

*Bearing in mind* that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

*Convinced* that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

*Encouraging* States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

*Emphasizing* that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

*Believing* that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

*Recognizing* and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

*Recognizing that* the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

*Solemnly proclaims* the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

#### *Article 1*

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights<sup>375</sup> and international human rights law.

#### *Article 2*

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

#### *Article 3*

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

#### *Article 4*

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

#### *Article 5*

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

#### *Article 6*

Every indigenous individual has the right to a nationality.

#### *Article 7*

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

#### *Article 8*

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
  - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
  - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
  - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
  - (d) Any form of forced assimilation or integration;
  - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

<sup>375</sup> Resolution 217 A (III).

#### *Article 9*

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

#### *Article 10*

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

#### *Article 11*

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

#### *Article 12*

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

#### *Article 13*

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

#### *Article 14*

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

#### *Article 15*

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

#### *Article 16*

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.
2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

#### *Article 17*

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.
3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

#### *Article 18*

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

#### *Article 19*

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

#### *Article 20*

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

#### *Article 21*

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

#### *Article 22*

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

#### *Article 23*

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, 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.

#### *Article 24*

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

#### *Article 25*

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

#### *Article 26*

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

#### *Article 27*

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

#### *Article 28*

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

#### *Article 29*

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

#### *Article 30*

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.
2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

#### *Article 31*

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

#### *Article 32*

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

#### *Article 33*

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

#### *Article 34*

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

#### *Article 35*

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

#### *Article 36*

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.
2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

#### *Article 37*

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

#### *Article 38*

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

#### *Article 39*

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

#### *Article 40*

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

#### *Article 41*

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

#### *Article 42*

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

#### *Article 43*

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

#### *Article 44*

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

#### *Article 45*

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

#### *Article 46*

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.
2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.
3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.



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