

Queensland Government
Treaty Statement of Commitment
_____ and _____
response to recommendations
of the Eminent Panel

August 2020



The journey so far

Aboriginal and Torres Strait Islander peoples have long called for acknowledgement of the injustices they have suffered, self-determination and a significant change in the relationship with the Queensland Government.

In July 2019, the Queensland Government launched Tracks to Treaty – Reframing the relationship with Aboriginal and Torres Strait Islander Queenslanders and signed a Statement of Commitment to give effect to this reframed relationship.

Path to Treaty is a very important way to come together and negotiate a new way of working in partnership for the Queensland Government and Aboriginal and Torres Strait Islander peoples—one that is underpinned by self-determination and actioned through truth telling, empowerment and agreement making.

It also builds on a number of Queensland-led initiatives that are advancing reconciliation by fostering a shared pride in culture, healing the wounds of the past, and setting the foundation for a new and just relationship. These include the:

- addition to the preamble to the Queensland Constitution to honour Aboriginal and Torres Strait Islander peoples as the First Australians in 2010
- launch of the *Queensland Government Reconciliation Action Plan 2018–2021*
- establishment of Local Thriving Communities initiative to support local decision making in remote communities and build on their strengths to implement ideas on how best to achieve the aspirations and vision for their local community
- commencement of the *Queensland Human Rights Act 2019* which in its preamble acknowledges the right to self-determination of Aboriginal and Torres Strait Islander peoples, and creates obligations on public entities to protect and promote the human rights set out in the Act, including the distinct cultural rights of Aboriginal and Torres Strait Islander peoples
- commitment to the legal recognition of traditional Torres Strait Islander child rearing practices
- implementation of *Our Way: A generational strategy for Aboriginal and Torres Strait Islander children and families, 2017–2037*
- establishment of the Queensland First Children and Families Board
- appointment of the First Nations Advisor for Housing
- adoption of the Domestic and Family Violence Prevention Strategy and development of *Queensland’s Framework for Action – Reshaping our Approach to Aboriginal and Torres Strait Islander Domestic and Family Violence*
- appointment of the first Chief Aboriginal and Torres Strait Islander Health Officer and Deputy Director-General of the Aboriginal and Torres Strait Islander Health Division
- commencement of the *Health and other Legislation Amendment Act 2019* which aims to strengthen the commitment to health equity for Aboriginal and Torres Strait Islander peoples
- development of a Queensland Aboriginal and Torres Strait Islander Healing Strategy to address the impact of intergenerational trauma, grief and loss, violence and abuse
- ongoing commitment to increase representation of Aboriginal and Torres Strait Islander peoples on government boards and committees.

Starting the Path to Treaty conversation

We will continue to celebrate First Nations cultures, languages, histories, lore, and spiritualities that have thrived for more than 65,000 years. We will also take the opportunity to tell the truth and begin to heal together.

Consultation on the Path to Treaty provided the opportunity for Aboriginal, Torres Strait Islander and non-Indigenous Queenslanders to come together and start a journey towards a future that is more just, more equal and more respectful.

An Eminent Panel of high profile Aboriginal, Torres Strait Islander and non-Indigenous Queenslanders, supported by a Treaty Working Group, was appointed to guide genuine, respectful, and meaningful conversations between all Queenslanders about what a treaty might mean to them and how we can co-exist into the future on the land we now share.

The views and voices of Queenslanders, particularly those of Aboriginal and Torres Strait Islander peoples, were heard and more than 1700 people had their say through consultations held from October to December 2019. This included 24 face-to-face community sessions from Thursday Island in the north to the Gold Coast in the south, 331 online surveys and 38 written submissions.

What we heard

Strong support for a treaty process from First Nations and non-Indigenous Queenslanders alike that is unique to Queensland, engages all people and is based on truth.

Path to Treaty conversations with Aboriginal and Torres Strait Islander peoples and non-Indigenous people expressed significant support for a treaty-making process, with truth-telling and honesty about our shared history to be at the heart of the treaty process. Participants said that treaty-making would be a significant and long overdue milestone for Queensland.

Queenslanders also identified a number of other important key issues, including the need for:

- **acknowledgement** of First Nations' sovereignty
- **a framework for truth-telling** and addressing past wrongs
- **negotiating treaties** that have meaningful effect on the lives of First Nations peoples
- **engaging young people** in the treaty process
- **capacity building** to enable Aboriginal and Torres Strait Islander peoples to participate in the treaty making process
- **representative mechanisms** and governance for the treaty process.

This sentiment reflects similar discussions with First Nations peoples across Australia on the importance of truth-telling and the need for honest, genuine and respectful conversations. These views are what ultimately led to the Uluru Statement from the Heart, and marked the nation as ready to meaningfully understand each other and move forward towards reconciliation.

In February 2020, the Path to Treaty Eminent Panel officially presented its recommendations, supported by the findings of the Treaty Working Group report, to the Queensland Government for consideration. Based on community sentiment and extensive support for agreement making with First Nations Queenslanders, the Eminent Panel outlined its principal recommendation to advance a treaty process in Queensland.

Treaty enriches the lives of all Queenslanders

Treaties have been used throughout the world as accepted means for acknowledging past injustices, resolving differences, and creating a shared future.

The Path to Treaty enriches the lives of all Queenslanders and provides for greater recognition, celebration and learning from First Nations peoples.

It represents a significant step forward in reframing the relationship with First Nations peoples—one where all Queenslanders recognise Aboriginal and Torres Strait Islander peoples as the first peoples of this land we now share. It also provides a unique opportunity to come together and learn about our state's shared history, and respectfully acknowledge the harm caused by past injustices.

Understanding and accepting our shared history will be fundamental to healing and addressing the ongoing disparity that Aboriginal and Torres Strait Islander peoples continue to experience, and achieving justice, equality and access to opportunity for First Nations peoples.

Our commitment to a Path to Treaty

Now is the time to continue the Path to Treaty with the ultimate aim of treaty making with First Nations peoples.

As we face the challenges of 2020, the Queensland Government remains committed to reframing the relationship with First Nations peoples. The Queensland Government accepts or accepts in principle the Eminent Panel recommendations and is committed to:

- **a treaty-making process** with First Nations peoples in Queensland
- **exploring options to establish an independent body** through legislation to lead the Path to Treaty process including a truth-telling and healing process and supporting First Nations peoples to engage in the treaty making process, as recommended by the Eminent Panel.

In advancing the Path to Treaty process, the Queensland Government will seek to engage with all Queenslanders to:

- **increase understanding** of the need for sharing of truth and importance of historical acceptance in the reconciliation journey
- **raise awareness** about Queensland's shared history and the diversity of perspectives.

Mutual understanding, respect and recognition will be the cornerstone to any form of agreement making with First Nations Queenslanders.

Aspirations for a Path to Treaty in Queensland will progress in parallel to the national Indigenous voice to government process and embody the *Uluru Statement from the Heart* themes of Voice, Treaty and Truth.

The appointment of a Treaty Advancement Committee will provide the Queensland Government with expert advice and guidance on options for implementation of Path to Treaty recommendations. The Committee will also seek to maintain momentum for Path to Treaty discussions across Queensland, including overseeing community and stakeholder engagement, research initiatives and seek partnerships opportunities.

Following this engagement process and the work of the Treaty Advancement Committee, the Queensland Government will consider options in 2021 to establish an independent legislated body to lead the Path to Treaty, as recommended by the Eminent Panel.

The Queensland Government's response to all recommendations from the Eminent Panel is detailed in the following pages.

Recommendations and response

Legend

Accepted: The Queensland Government supports and intends to implement the recommendation.

Accepted in-principle: The Queensland Government supports the intent or merit of the policy underlining the recommendation, but further policy consideration including assessment of resourcing is required.

| RECOMMENDATION | RESPONSE |
|--|---|
| <p>1. Path to Treaty Overview</p> <p>Recommendations:</p> <p>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.</p> <p>1.2 That the Path to Treaty be conducted using a rights based approach consistent with both the <i>Human Rights Act 2019 (Qld)</i> and the United Nations Declaration on the Rights of Indigenous Peoples.</p> <p>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:</p> <p>1.3.1 the establishment of the First Nations Treaty Institute as an independent body to lead the Path to Treaty process;</p> <p>1.3.2 the facilitation of a process of truth telling and healing;</p> <p>1.3.3 the building of capacity for First Nations to actively participate in the treaty process;</p> <p>1.3.4 deepening the understanding and engagement of the wider Queensland community in the Path to Treaty;</p> <p>1.3.5 the adequate resourcing of these actions through the establishment of a First Nations Treaty Future Fund and;</p> <p>1.3.6 the placing before Parliament a Bill to further the Path to Treaty, establish the First Nations Treaty Institute and the First Nations Treaty Future Fund.</p> | <p>1.1, 1.2: Accepted</p> <p>The Queensland Government is committed to embarking on a Path to Treaty with First Nations peoples consistent with the rights as embodied in the <i>Human Rights Act 2019 (Qld)</i> and the principles articulated in the United Nations Declaration on the Rights of Indigenous Peoples.</p> <p>1.3: Accepted in-principle</p> <p>The Queensland Government will make a Treaty Statement of Commitment that commits to proceeding on the Path to Treaty.</p> <p>1.3.1 – 1.3.5: Accepted in-principle</p> <p>The COVID-19 global pandemic has impacted the ability to establish the First Nations Treaty Institute and support its functions.</p> <p>To maintain the Path to Treaty momentum during this time, a Treaty Advancement Committee (the Committee) will be established to provide expert advice and guidance to the Queensland Government on options for implementation of the recommendations.</p> <p>This will include consideration by the Committee of the Queensland Aboriginal and Torres Strait Islander Healing Strategy, which is being co-designed by the Healing Foundation with Aboriginal and Torres Strait Islander communities in Queensland to address the impact of intergenerational trauma, grief and loss, violence and abuse.</p> <p>1.3.6: Accepted in-principle</p> <p>The Government will consider introducing legislation following advice from the Committee.</p> |
| <p>2. The First Nations Treaty Institute</p> <p>Recommendations:</p> <p>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).</p> <p>2.2 That the functions of the First Nations Treaty Institute include:</p> <p>2.2.1 advising and facilitating the development of a treaty making framework;</p> <p>2.2.2 advising on possible representative mechanisms and structures for First Nations Peoples;</p> <p>2.2.3 leading a process of truth telling and healing;</p> <p>2.2.4 providing support to build the capacity of First Nations to engage in the treaty making process;</p> <p>2.2.5 supporting the development of governance models suitable for First Nations and;</p> <p>2.2.6 engagement with the Queensland community on the Path to Treaty.</p> | <p>2.1 – 2.4: Accepted in-principle</p> <p>The Queensland Government welcomes an opportunity to work together towards a just, more equal and more respectful relationship with Aboriginal and Torres Strait Islander peoples however notes COVID-19 has impacted the ability to establish the First Nations Treaty Institute.</p> <p>The Government will consider options to establish the First Nations Treaty Institute in 2021 informed by the work of the Committee.</p> |

| RECOMMENDATION | RESPONSE |
|--|---|
| <p>2. The First Nations Treaty Institute (continued)</p> <p>2.3 That the governance of the Institute be the responsibility of an Institute Council comprising:</p> <ul style="list-style-type: none"> 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 and; 2.3.3 a Chief Executive Officer appointed by the Institute Council <p>2.4 That the Institute recommend to the Queensland Government the representative mechanisms and structures for First Nations provided the recommendation:</p> <ul style="list-style-type: none"> 2.4.1 has been informed through extensive consultation with First Nations Peoples and; 2.4.2 represents an agreed position of First Nations. <p>2.5 That the First Nations Treaty Institute operate independently of the Queensland Government with reporting to be to the Queensland Parliament.</p> <p>2.6 That funding for the First Nations Treaty Institute be drawn from the First Nations Treaty Future Fund.</p> | <p>2.5: Accepted in-principle</p> <p>The establishment of a First Nations Treaty Institute as a statutory body to provide flexibility and independence will be subject to further Government consideration following advice from the Committee.</p> <p>2.6: Accepted in-principle</p> <p>Following expert advice and guidance from the Committee, the Queensland Government will consider options to support the next steps towards treaty making in Queensland, including support for the functions of the First Nations Treaty Institute.</p> |

3. Truth Telling and Healing

Recommendations:

- 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 and;
 - 3.4.2 As source material for the development of mandatory educational curricula.

3.1 – 3.3: Accepted in-principle

The Queensland Government acknowledges the need for a process of truth telling on the history of First Nations peoples in Queensland, including the impact of colonisation and dispossession.

The Queensland Government will support in good faith any future truth telling and healing process and will further consider options on how best to efficiently deliver the range of outcomes sought through the truth and healing process, informed by the advice of the Committee. This advice will also be informed by the implementation of the Queensland Aboriginal and Torres Strait Islander Healing Strategy.

3.4.1: Accepted in-principle

It is anticipated that material developed through a truth telling process would be retained as source material for State museums and libraries.

3.4.2: Accepted in-principle

It is anticipated that the Queensland Government would support Queensland schools to access and use resources generated through a truth telling process as source material to support teaching Aboriginal and Torres Strait Islander histories and cultures.

It is anticipated that the Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP) and the Department of Education (DoE) would work with Queensland Curriculum and Assessment Authority to update the *Aboriginal and Torres Strait Islander Perspective Statement 2017–2020* and explore options for truth telling resources, material and testimony to be made available to Queensland schools.

It is anticipated that DATSIP and DoE would advocate for the truth telling process to be incorporated into the Australian Curriculum.

RECOMMENDATION

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4. Capacity Building

Recommendations:

- 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.

4.1 – 4.3: Accepted in-principle

Following expert advice and guidance from the Committee, the Queensland Government will consider introducing legislation to establish the First Nations Treaty Institute to assist First Nations peoples become treaty ready over time, develop governance models and build capacity, including through partnerships with universities and other bodies.

4.4: Accepted

The Minister for Aboriginal and Torres Strait Islander Partnerships will coordinate preparations across government for the Path to Treaty process, overseen by the Premier.

5. Community Understanding and Engagement

Recommendations:

- 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.

5.1: Accepted in principle

The Queensland Government, in partnership with the Committee members, will support the momentum created by the Path to Treaty consultation process and ensure broader community support for the Path to Treaty is built upon.

The Queensland Government will deliver community engagement activities to build awareness of the history of First Nations peoples and the Path to Treaty process in the wider Queensland community.

6. Implementation – The Path to Treaty Act

Recommendations:

- 6.1 That the Queensland Government place before Parliament 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 and;

6.1: Accepted in-principle

Informed by advice from the Committee, the Government will consider introducing legislation into Parliament to further the Path to Treaty in the next term of Government.

6.2: Accepted in-principle

The Queensland Government will consider the preparation of legislation to respond to the proposed acknowledgement of First Nations.

RECOMMENDATION

RESPONSE

6. Implementation – The Path to Treaty Act (continued)

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 (Qld)* and the principles of the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration).

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 and;
- 6.3.9 reporting and other necessary legislative requirements.

6.3: Accepted in-principle

Informed by the advice of the Committee, options to introduce legislation to progress Path to Treaty will be further considered by the Queensland Government.

Guiding principles for the parties to the Path to Treaty process which are of particular significance for First Nations peoples will be included in this consideration.

Government will also consider the establishment of an independent entity to oversee the treaty-making process and the development of a treaty negotiation framework.

RECOMMENDATION

RESPONSE

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

Recommendations:

- 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 at the earliest practical opportunity 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 and;
 - 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.

7.1 – 7.3: Accepted-in-principle

Informed by the advice of the Committee, the Queensland Government will consider options to support the Path to Treaty and the treaty-making process over time including associated resourcing.

8. Transparency

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

8.1: Accepted

The Queensland Government will publicly release the report of the Treaty Working Group and the advices from the Eminent Panel.

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