



TREATY  
ADVANCEMENT  
COMMITTEE  
REPORT

**OCTOBER 2021**

## ACKNOWLEDGEMENT

*We pay our respects to the Aboriginal peoples and Torres Strait Islander peoples of this land, their ancestors and their legacy. The foundations laid by these ancestors—the First Australians—give strength, inspiration and courage to current and future generations towards creating a better Queensland.*

*We are committed to working with, representing, advocating for and promoting the needs of Aboriginal and Torres Strait Islander Queenslanders with unwavering determination, passion and persistence.*

*As we reflect on the past and give hope for the future, we walk together on our shared journey of reconciliation where all Queenslanders are equal and the diversity of Aboriginal and Torres Strait Islander cultures and communities across Queensland are fully recognised, respected and valued by all Queenslanders.*

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The Honourable Craig Crawford MP  
Minister for Seniors and Disability Services and  
Minister for Aboriginal and Torres Strait Islander Partnerships

Dear Minister

On 12 February 2021, you commissioned the Treaty Advancement Committee (the Committee) to progress the Path to Treaty in Queensland. The formation of the Committee followed the Queensland Government's announcement on 13 August 2020 that it had accepted in full or in-principle each of the Eminent Panel recommendations. The Eminent Panel and a Treaty Working Group had been tasked in 2019 to start the conversation and advise whether and how the state could settle a treaty or treaties with the First Nations peoples of Queensland—Phase One of the treaty process.

The Committee's Terms of Reference in essence required it to:

- **provide advice** on options to implement the Eminent Panel's recommendations on the Path to Treaty; and
- **report back** to Queensland communities on the results of the Path to Treaty consultations conducted by the Eminent Panel and Treaty Working Group and the Queensland Government's response.

We are pleased to provide the Treaty Advancement Committee Report (the Report). The Report provides an analysis and recommendations on options to implement the Eminent Panel's proposals to move Queensland along the Path to Treaty—Phase Two of the treaty process.

The balance of this letter is a high-level overview of the Report with a short summation of the Path to Treaty process to serve as an accessible reference point for First Nations peoples and Queenslanders more widely on the developments since 2019.

## Background to the Committee's report

Queensland has been on a Path to Treaty as a formal policy objective of the Queensland Government since July 2019. Initially arising from a recommendation of the Reparations Taskforce<sup>1</sup> and its work into the stolen wages of First Nations peoples, the Path to Treaty is part of a broader goal to reframe and improve the relationship between the Queensland Government and the Aboriginal peoples and Torres Strait Islander peoples. While the current process is recent, the call for a treaty to properly ground the relationship between First Nations and first colonial, and then successor national and state governments can be traced to the beginning of British colonisation of the Australian continent.

To advance the Path to Treaty, in July 2019 the Queensland Government established the Treaty Working Group to conduct community consultations on whether Queensland should seek a treaty or treaties with First Nations and if so, how the treaty process could most effectively be progressed. Oversighting the Treaty Working Group was an Eminent Panel of Aboriginal and Torres Strait Islander peoples and non-Indigenous Queenslanders. Community consultations occurred in 24 locations across the state, supplemented by online surveys and written submissions.

The consultations showed broad support for Queensland to continue on the Path to Treaty with robust discussions including:

- dealing with the 'unfinished business' of the basis and consequences of the colonisation of Queensland and its devastating ongoing impact on First Nations peoples;
- providing empowerment for First Nations peoples to have the ability to deal with the social and economic disadvantage that top-down government programs have not, and never will be able to, address;
- being a process that advances reconciliation and justice between First Nations peoples and all other Queenslanders; and
- marking the maturity of Queensland to deal honestly with its history and provide the foundation for a path forward.

As summarised by the Premier the Honourable Annastasia Palaszczuk MP, when delivering to Parliament the Queensland Government's response to the recommendations from Phase One, "*The Path to Treaty will benefit all Queenslanders, help promote reconciliation, foster a shared pride in Aboriginal and Torres Strait Islander culture and heritage, and help heal the wounds of the past and create a shared future for all of us.*"



At the conclusion of Phase One of the treaty process in February 2020, the Eminent Panel presented its advice to the Queensland Government. This advice proposed the institutional arrangements or basic architecture to enable the Path to Treaty to be built. It proposed that a new body be created—a First Nations Treaty Institute—to support First Nations peoples independently of government to become treaty-ready and to lead a truth telling and healing process for Queensland. It was proposed that a First Nations Treaty Future Fund be established to provide independence and security of resourcing for the First Nations Treaty Institute and treaty process.

Shortly after the conclusion of Phase One, Queensland along with the rest of Australia experienced the first wave of the COVID-19 pandemic. The impact of the pandemic and the holding of the Queensland election in October 2020 resulted in a hiatus in the treaty process.

## Key developments

The Path to Treaty process was renewed with the formation of the Committee in February 2021 some twelve months after the conclusion of Phase One. The delay and restrictions caused by the COVID-19 pandemic meant that communities consulted during Phase One had not received a report back on the outcome. Further there had been some important developments nationally and in other States and Territories that the Committee reflected upon in advising how the Phase One recommendations could be best implemented.

These key developments were the:

- co-design process on local and regional structures to support a National Voice for First Nations to the Commonwealth Parliament or government;
- advancement of the Victorian treaty process including the establishment of the Yoorrook Justice Commission to lead a truth telling process; and
- Northern Territory treaty process including the release of the Treaty Discussion Paper and Interim Report of the Treaty Commissioner.

Most significantly, the *Queensland Budget 2021–22* (Queensland Budget) tabled on 15 June 2021 established a \$300 million Path to Treaty Fund with its returns to support the treaty process. This ground-breaking initiative necessitated a re-envisaging of the Phase One recommendations on how the Path to Treaty should be resourced.

It is important to understand that the Queensland treaty process is separate to the national process considering recognition of First Nations peoples in the Commonwealth Constitution. The Committee supports the Voice to Parliament and the *Uluru Statement of the Heart* themes of Voice, Treaty, Truth.

It is however uncertain whether the aspiration for a constitutionally enshrined Voice will be adopted by the Commonwealth Government and a referendum placed before the Australian people. Equally it is unknown if or when the proposed Makarrata Commission envisaged in the Uluru Statement to supervise a treaty and truth telling process at the national level might emerge.

The Committee believes the Queensland treaty process should be sufficiently agile to align with the national leadership contained in the Uluru process, but Queensland should seize the opportunity now available to reframe its relationship with First Nations peoples and continue its Path to Treaty process.

## The approach adopted by the Committee

The Committee approached its task at two levels. Firstly, it was important to ‘report back’ to First Nations communities and non-Indigenous Queenslanders on the outcome of Phase One of the treaty process. While delayed because of the COVID-19 pandemic and the 2020 Queensland election, the Committee held face to face and virtual meetings in communities and with groups to feedback on Phase One and to outline important recent developments such as the creation of the Path to Treaty Fund in the Queensland Budget.

Secondly, the Committee held dialogues with representatives to understand the implications of recent developments on the treaty process. These dialogues included:

- First Peoples’ Assembly of Victoria;
- Senior Advisory Group, National Indigenous Voice Co-Design;
- Northern Territory Treaty Commission;
- Queensland Treasury; and
- Senior office holders of the State Library of Queensland, Queensland Museum, Queensland Art Gallery/Queensland Gallery of Modern Art, and Queensland State Archives.

## Key conclusions of the Committee

The Committee believes the basic framework and institutional arrangements recommended in Phase One and accepted fully or in-principle by the Queensland Government remain appropriate and should be implemented. This means that the Committee's recommendations are focussed on how these institutional arrangements should best be implemented, and when. Further detail is proposed on matters such as the governance of the First Nations Treaty Institute and the phases of development underpinning the set-up of the institutional arrangement.

The key areas where the Committee propose a significant modification from that recommended in Phase One are:

- **the process of truth telling and healing** not be primarily conducted by the First Nations Treaty Institute but by a separate and staged process. The first stage is local and regional truth telling done in conjunction with the public institutions of Local Councils, Libraries, Museums, Archives and Galleries. The second stage is a formal Truth Telling and Healing Inquiry created specifically for that purpose;
- **revision of the operation of the Path to Treaty Fund** because of the Queensland Budget decision to create a \$300 million Fund; and
- **establishing an Independent Interim Body** to facilitate First Nations co-design with government of the First Nations Treaty Institute and establishment of the formal Truth Telling and Healing Inquiry.

## Overview of the Committee's recommendations

### First Nations Treaty Institute

The principal institutional arrangement proposed to implement the Path to Treaty is the creation of the First Nations Treaty Institute (the Institute). The Institute will be independent of government and will be a facilitating and enabling body to advance the work to make Queensland treaty-ready. It will not be a party to a treaty but will support First Nations to be equipped to negotiate a treaty. The Institute will be resourced from allocations earned from the Path to Treaty Fund. The Committee recommendations go to the structure of the Institute, its functions, its governance, and measures to provide accountability and transparency to its operations.

## Truth Telling and Healing Process

The need for truth telling and healing was a consistent and strongly expressed view during the community consultations in Phase One. This arose from a very limited understanding in the wider Queensland community of the history of colonisation and its impact on First Nations peoples. While there has been 'truth telling' through various forums, such as the Australian Human Rights Commission into the Stolen Generation, there has not been a comprehensive process to capture the complete history of Queensland and explain its impact on the current life experiences of First Nations peoples. A much stronger shared understanding of the impacts of colonisation and the policies of protection and assimilation on First Nations peoples will ground the treaty process in Queensland.

The Committee proposes that the Truth Telling and Healing Process be undertaken separately from the First Nations Treaty Institute because:

- the time and effort required to conduct the Truth Telling and Healing Process will distract from the Institute core purpose of supporting treaty-making;
- a dedicated body to conduct truth telling can be appropriately structured and empowered to undertake processes more effectively and quickly; and
- best practice in Australia and internationally supports an independent Commission of Inquiry style model.

The Committee believes that truth telling and healing should be a two staged approach. The first stage will focus on local and regional initiatives and the engagement with public institutions of memory and story—museums, libraries, archives, and galleries—to help build understanding in the wider community about the importance of treaty. The second stage will be establishment of a formal Truth Telling and Healing Inquiry (the Inquiry) to conduct state-wide evidence gathering to chronicle the stories of First Nations and Queensland's history of colonisation. Healing and supporting First Nations peoples and others relating their experiences is critical in this process.

It should be stressed that the Inquiry is not intended to be a process which requires extensive use of powers of compulsion and while good procedures and natural justice will be followed, it is not envisaged that a legalistic approach will be taken.

The emphasis will be on building community understanding and providing a platform for First Nations to tell their truth, and for wider community engagement on why a treaty process is essential for a reconciled Queensland. To continue the momentum of building community understanding and reconciliation through truth telling and healing the First Nations Treaty Institute will continue to lead these actions, in partnership with the Queensland Government, following completion of the Inquiry.

The Committee recommendations go to the form of the Truth Telling and Healing Process, the objectives and how Terms of Reference and Inquiry membership should be settled. Critically it is proposed that there be extensive First Nations involvement in establishing and framing the formal Inquiry.

### Path to Treaty Fund

The Queensland Budget included the transfer of the Titles Registry to a Queensland Future Fund with \$300 million allocated to a Path to Treaty Fund (the Fund). This decision overtook the Eminent Panel recommendation in Phase One of annual budget contributions to a First Nations Treaty Future Fund to build up the available capital over time for a period envisaged to be at least 10 years. The critical importance of a Fund from which annual allocations can be drawn is to give the treaty process financial security and independence from the uncertainty of year-to-year budgetary processes.

With a secure source of funding of at least \$10 million per year, the focus of the Committee recommendations are on how the allocations of the Fund should be transferred to the Institute and the good governance arrangements to account for the use of the funding. While the creation of the Fund is a significant decision to support the treaty process by the Queensland Government, it should be noted the:

- Truth Telling and Healing Process will largely need to be funded separately from the allocations for the treaty process and the First Nations Treaty Institute coming from the Path to Treaty Fund;
- First Nations Treaty Institute may need additional budget allocations during periods of the treaty process; and
- Path to Treaty Fund is available only to resource the treaty process. Any financial call on the Queensland Government to both participate in treaty negotiations and meet outcomes from settled treaties will need to be met from sources independent of the Path to Treaty Fund.

### Path to Treaty Office

The role of the Institute is centred upon support for First Nations to engage in the treaty process. While the Institute will play a role in broader community engagement, the primary responsibility will rest with the government to engage and inform Queenslanders about the treaty and truth telling processes. It will be equally important for the government to be ready to engage in treaty negotiations. The Committee proposes that a Path to Treaty Office be established within the government to lead on both matters.

### Independent Interim Body

Prior to the commencement of the First Nations Treaty Institute, it will be important for the momentum of the Path to Treaty to be maintained. The Committee proposes that an Independent Interim Body be established to work with government and facilitate First Nations input into both the drafting of the legislation to create the Institute and guiding the truth telling and healing staged approach, including establishment and set-up of the Inquiry. This will include the Terms of Reference and the selection process for the Inquiry members.

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#### Dr Jackie Huggins AM

Treaty Advancement Committee Co-Chair

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#### Mr Mick Gooda

Treaty Advancement Committee Co-Chair

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#### Emeritus Professor Michael Lavarch AO

Treaty Advancement Committee member

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#### Dr Josephine Bourne

Treaty Advancement Committee member

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#### Dr Sallyanne Atkinson AO

Treaty Advancement Committee member



## First Nations Treaty Institute

### 1. Establishment of the First Nations Treaty Institute

The Committee recommends that:

- 1.1 The First Nations Treaty Institute (the Institute) be created to take carriage of the actions required to progress the Path to Treaty;
- 1.2 The Institute be a statutory entity established by an Act of the Queensland Parliament;
- 1.3 A Bill to establish the Institute be introduced to Parliament by 30 June 2022; and
- 1.4 The Bill clearly state the Institute should not undertake, or be a party to, the negotiation of treaties.

### 2. Acknowledgement

The Committee recommends that the proposed legislation will include acknowledgement that:

- 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;
- 2.2 Colonisation occurred without the consent of First Nations and often against the active resistance of First Nations peoples;
- 2.3 First Nations have never ceded and continue to assert sovereignty;
- 2.4 Colonisation occasioned devastating disruption to First Nations societies and the dispossession of First Nation Peoples of their lands, seas, waters and air;
- 2.5 First Nations have continuing responsibility for their lands, seas, waters and air in accordance with traditional laws and customs;
- 2.6 First Nations cultures and knowledge is an enormous resource for Queensland; and
- 2.7 Queensland seeks to embark on a Path to Treaty in partnership, 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*.

### 3. Guiding Principles

The Committee recommends that the legislation and establishment of the Institute be guided by the following principles:

- 3.1 Self-determination;
- 3.2 Participation in decision-making underpinned by free, prior and informed consent and good faith;
- 3.3 Respect for and protection of culture; and
- 3.4 Equality and non-discrimination.

### 4. Institute Functions

The Committee recommends that, as a minimum, the functions of the Institute include:

- 4.1 Co-developing a Treaty-Making Framework;
- 4.2 Building the capacity of First Nations people to engage in the treaty-making process;
- 4.3 Engaging with representative structures for First Nations peoples;
- 4.4 Facilitating treaty-making, dispute resolution and advising on a future Treaty Tribunal;
- 4.5 Undertaking and providing culturally and ethically informed research;
- 4.6 Engaging with the wider Queensland community about Path to Treaty;
- 4.7 Leading actions and recommendations that emerge from the Truth Telling and Healing Inquiry process (as referred to below);
- 4.8 Facilitating truth telling and healing, knowledge transfer and collection;
- 4.9 Administering allocations from the Path to Treaty Fund; and
- 4.10 Other functions conferred on it by the Minister, in agreement with the Institute.

### 5. Institute Powers

The Committee recommends that the powers of the Institute include, at a minimum:

- 5.1 Powers to administer allocations from the Path to Treaty Fund;
- 5.2 Powers to create and develop intellectual property and build the data sovereignty of Aboriginal and Torres Strait Islander peoples; and
- 5.3 Powers to do all things necessary to carry out its functions.

### 6. Inaugural Institute Council

The Committee recommends that an Inaugural Institute Council be established to oversee the operations of the Institute immediately upon the Institute legislation being enacted and that it be:

- 6.1 Appointed by the Governor-in-Council for a period of no more than two years;
- 6.2 Comprised of eight members, and two Co-Chairs, all of whom will be Aboriginal and/or Torres Strait Islander persons;
- 6.3 Reflect the diversity of Queensland's First Nations peoples across the state;
- 6.4 Gender balanced; and
- 6.5 Co-Chaired by a woman and man who will be selected by members of the Inaugural Council.

## 7. Institute Council

The Committee recommends that:

- 7.1 Members of the First Nations Treaty Institute Council (the Institute Council) be Aboriginal and/or Torres Strait Islander persons directly appointed by First Nations representative mechanisms and structures.

## 8. Institute Staff

The Committee recommends that the:

- 8.1 Positions of Chief Executive Officer and Council Secretary of the Institute be established;
- 8.2 Chief Executive Officer and Council Secretary be appointed by the Institute Council;
- 8.3 First Chief Executive Officer and first Council Secretary should be appointed by the Inaugural Institute Council;
- 8.4 Position of the Chief Executive Officer be classed as a 'special measure' position in that it must be filled by an Aboriginal and/or Torres Strait Islander person; and
- 8.5 Term of appointment be:
  - 8.5.1 for the first CEO – not more than two years; and
  - 8.5.2 for any subsequent CEO – not more than three years.

## 9. Advisory Committees

The Committee recommends that:

- 9.1 The Institute Council may establish Advisory Committees;
- 9.2 The legislation establishing the Institute mandate the two following permanent Advisory Committees:
  - 9.2.1 an Audit, Finance and Risk Management Advisory Committee; and
  - 9.2.2 a Research and Ethics Advisory Committee;
- 9.3 Any Advisory Committee must be chaired by an Institute Council member; and
- 9.4 The Institute Council cannot delegate any of its powers and/or functions to any Advisory Committee it establishes.

## 10. Reporting

The Committee recommends that the Institute:

- 10.1 provide an Annual Report to the Queensland Parliament; and
- 10.2 develop and publish a Strategic Plan every four years.

## 11. Review of the Legislation

The Committee recommends that:

- 11.1 The Act establishing the Institute be reviewed in the fifth year of the Institute's operation.

## Truth Telling and Healing Process

### 12. Staged Truth Telling and Healing

The Committee recommends that a staged approach be adopted for a Truth Telling and Healing Process consisting of a:

- 12.1 First Nations-led engagement with public institutions to build understanding in the Queensland community of the reasons and importance of the Path to Treaty; and
- 12.2 Formal Inquiry process through a legislated model created to conduct truth telling and healing.

### 13. Truth Telling and Healing Inquiry Objectives

The Committee recommends that the Truth Telling and Healing Inquiry (the Inquiry) should, at a minimum:

- 13.1 Engage with communities to inquire into and chronicle the history of colonisation and the impacts on First Nations peoples and all Queenslanders;
- 13.2 'Do no harm' in the conduct of the Inquiry by adopting the principles of free, prior and informed consent and a trauma-informed approach;
- 13.3 Promote public awareness, inform education and develop shared understandings of First Nations cultures, histories, languages and traditions; and
- 13.4 Link with the treaty-making process and provide recommendations to inform treaty-making.

### 14. Term of the Inquiry

The Committee recommends that:

- 14.1 The Inquiry have a three-year term.

### 15. Membership of the Inquiry

The Committee recommends that the Inquiry be conducted by five members, selected in consultation with First Nations peoples and as a guideline the Inquiry have:

- 15.1 A majority of First Nation members;
- 15.2 At least one Aboriginal member and one Torres Strait Islander member;
- 15.3 At least two members that identify as female; and
- 15.4 At least one member with extensive legal experience.

## Path to Treaty Fund

### 16. Guaranteed funding for the Path to Treaty

The Committee recommends that:

- 16.1 A minimum annual allocation of \$10 million from the \$300 million Path to Treaty Fund (the Fund) is made available to maintain the Path to Treaty process.

### 17. Fund allocations once the Institute is established

The Committee recommends that, once established, the Institute receive the entirety of allocations from the Fund to resource the:

- 17.1 Administration of its operations; and
- 17.2 Carrying out of its legislated functions.

### 18. Fund allocations before the Institute is established

The Committee recommends that, until the Institute is established, the accrued allocations from the Fund be utilised as follows:

- 18.1 At least \$5 million for the agreed functions of the Institute that could commence immediately, in line with the Committee's recommendations; and
- 18.2 The remaining funds being made available to contribute to initial costs of establishing the Inquiry.

### 19. Administration of Funds

The Committee recommends that:

- 19.1 The legislation establishing the Institute provide for accountability and transparency in its operations and in the use of allocations from the Fund.

### 20. Transfer of Funds

The Committee recommends that:

- 20.1 The transfer of allocations from the Fund to the Institute be made available in four-year funding blocks.

## Path to Treaty Office

### 21. Path to Treaty Office

The Committee recommends that a Path to Treaty Office, overseen by the Premier, be established to:

- 21.1 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; and
- 21.2 Build capacity of the Queensland Government to prepare and be treaty-ready.

## Independent Interim Body

### 22. Independent Interim Body

The Committee recommends that an Independent Interim Body or equivalent mechanism be established to continue the momentum of the Path to Treaty by:

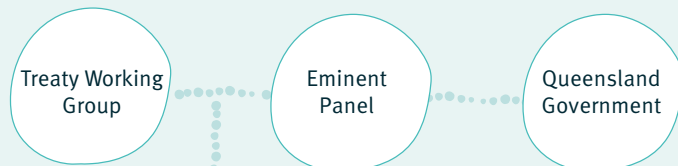
- 22.1 Providing a co-design partnership with the Queensland Government to inform the legislative phase of the Path to Treaty;
- 22.2 Guiding the truth telling and healing process inclusive of the establishment of the Inquiry and developing the Terms of Reference; and
- 22.3 Facilitating research and community engagement functions that will provide a solid grounding for the Institute's commencement.

# PHASED APPROACH TO IMPLEMENTING COMMITTEE RECOMMENDATIONS



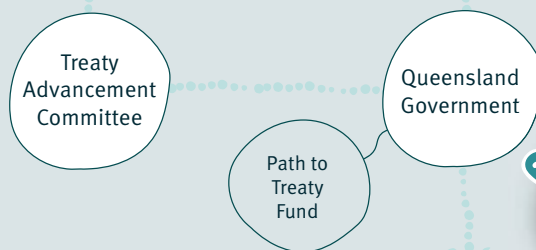
## Phase One: Starting the conversation

- Appointment of Treaty Working Group and Eminent Panel
- Delivered state-wide community consultations



## Phase Two: Advancing the Path to Treaty

- Appointment of Treaty Advancement Committee
- Treaty process update through state-wide community briefings
- Announcement of the Path to Treaty Fund



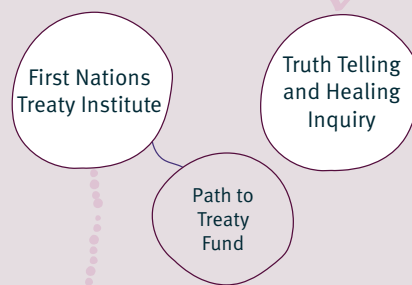
## Phase Three: Preparing for Establishment

- Appoint an Independent Interim Body
- Open a Path to Treaty Office
- Facilitate and resource local truth telling and healing
- Drawing on the Path to Treaty Fund



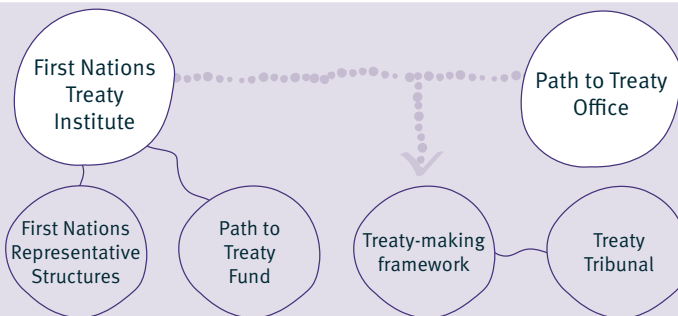
## Phase Four: Establishment

- Establish First Nations Treaty Institute
- Establish Truth Telling and Healing Inquiry
- Administering the Path to Treaty Fund



## Phase Five: Advancing treaty-making

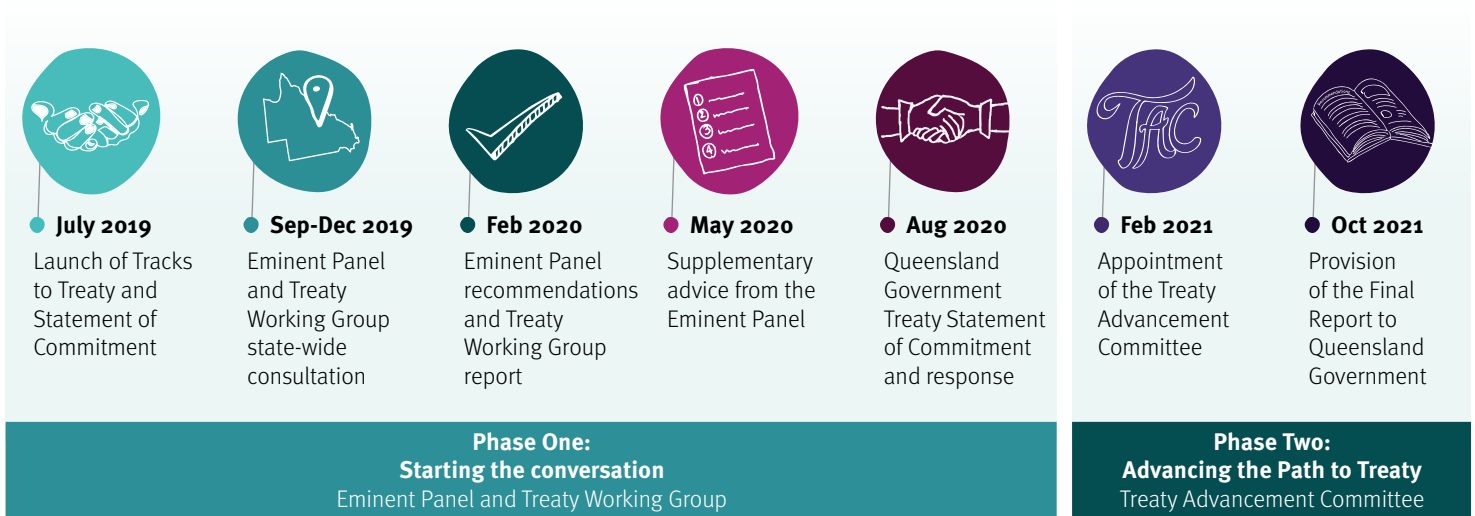
- Develop a treaty-making framework
- Establish a Treaty Tribunal
- Administering the Path to Treaty Fund



### Objective

Negotiation of a treaty or treaties between First Nations peoples and the Queensland Government

## The journey so far....



## Phase One: Eminent Panel and Treaty Working Group

*The Path to Treaty conversation in Queensland commenced in July 2019, when the Queensland Government launched the Statement of Commitment to reframe the relationship with Aboriginal and Torres Strait Islander peoples and the government through the Path to Treaty and Local Thriving Communities reforms.*

An Eminent Panel of Aboriginal, Torres Strait Islander and non-Indigenous Queenslanders was announced, supported by a Treaty Working Group, to start the conversation about the Path to Treaty and consider what a treaty or treaties might mean for all Queenslanders.

The Eminent Panel Co-Chairs were Emeritus Professor Michael Lavarch AO and Dr Jackie Huggins AM, with other members being the Honourable Dame Quentin Bryce AD CVO, Mr Mick Gooda, Mr Kerry O'Brien, Dr Josephine Bourne and Mr Dan Crowley.

Treaty Working Group Co-Chairs were Dr Jackie Huggins AM and Mr Mick Gooda, and the membership was made up of Mr Kenny Bedford, Ms Cheryl Buchanan, Mr Leon Filewood, Ms Charmaine Foley, Mr Shane Hoffman, Ms Elsie Seriat, Ms Sandi Taylor and Ms Kate Tully.

The Treaty Working Group was tasked with providing a report to the Queensland Government outlining levels of support and recommending next steps for a treaty process following state-wide community engagement. This engagement involved public consultation across Queensland from September to December 2019, attended by more than 1,000 people in 24 locations. In addition, 250 stakeholder individuals were consulted, 331 online surveys completed and 38 written submissions received.

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. This engagement revealed a limited understanding amongst non-Indigenous Queenslanders about these elements of the complete history of Queensland. Nonetheless there was clear support from non-Indigenous participants for a need to adjust this going forward. Given this, a shared understanding of history and truth is central to the Path to Treaty process and will create greater opportunities for a more cohesive and united Queensland.

This consultation process found significant support amongst both First Nations peoples and non-Indigenous Queenslanders to progress treaty-making. Key themes raised by participants in the 2019 consultations were incorporated in the Treaty Working Group's report, and included the need to:

- continue the Path to Treaty toward a legally binding treaty and/or treaties;
- acknowledge First Nations' sovereignty was never ceded;
- adopt a rights-based approach to underpin any treaty process;





*Treaty Advancement Committee community briefing, Brisbane, October 2021.*

- have truth telling as a precursor to treaty-making
- maintain the momentum, through the continued engagement of First Nations peoples and non-Indigenous Queenslanders to further support the treaty-making process; and
- build the capacity of First Nations and the Queensland Government to become treaty-ready.

The *Report from the Treaty Working Group on Queensland's Path to Treaty* (February 2020), included recommendations on what the treaty process could look like based on what was heard, including timing, process and the next steps. Also in February 2020, the Eminent Panel delivered its advice and recommendations to the Queensland Government.

The principal recommendation was that the Queensland Government proceed on a Path to Treaty with the aim of reaching a treaty or treaties with First Nations peoples. A number of actions were recommended by the Eminent Panel to progress Path to Treaty, and in order for these actions to be delivered effectively, the Eminent Panel proposed legislation for the establishment of an independent First Nations Treaty Institute, empowered with key functions, including the oversight of a Truth Telling and Healing Process, and creation of a First Nations Treaty Future Fund (the Fund) to resource the Institute and treaty processes.

The Eminent Panel and Treaty Working Group highlighted the importance for this legislative process to acknowledge First Nations peoples' assertions that their sovereignty was never ceded and that any treaties must be underpinned by the principles of the *Human Rights Act 2019 (Qld)* and the *United Nations Declaration on the Rights of Indigenous Peoples*.

Supplementary advice was provided by the Eminent Panel in May 2020, due to the impact of the COVID-19 pandemic on the proposed timing and implementation of the Path to Treaty for Queensland.

This advice recommended:

- a response to the Eminent Panel and Treaty Working Group recommendations through a Statement of Commitment detailing the Queensland Government's intention to proceed on the Path to Treaty during the next term of Parliament; and
- public release of the Treaty Working Group Report, and letters of advice from the Eminent Panel of February and May 2020.

In August 2020, the Premier tabled in Parliament the Queensland Government Treaty Statement of Commitment and response to the Eminent Panel's recommendations which committed to continuing the Path to Treaty journey.

The Queensland Government response either accepted or accepted in-principle all of the Eminent Panel recommendations. To assist in implementing the recommendations, the government announced it would establish a Treaty Advancement Committee (further information can be found at pages 11–12).

The Eminent Panel Recommendations and the Queensland Government's response to each recommendation are provided in Appendix I. A comparison of the Eminent Panel and Treaty Advancement Committee Recommendations are provided in Appendix III.

## Phase Two: Treaty Advancement Committee

*The Treaty Advancement Committee was appointed on 14 February 2021 to provide independent expert advice and guidance to the Queensland Government on options to implement the Eminent Panel's recommendations.*

A priority of the Committee was to provide feedback to the Queensland community on the Treaty Working Group report and Eminent Panel recommendations and to progress the Path to Treaty process. The Committee's Terms of Reference are at Appendix II.

The Committee includes five prominent Aboriginal, Torres Strait Islander and non-Indigenous Queenslanders with extensive knowledge and experience in specialist areas such as reconciliation, law and agreement-making, nation-building and self-determination.

### Dr Jackie Huggins AM—Co-Chair

A Bidjara/Birri Gubba Juru woman, former Co-Chair of the National Congress of Australia's First Peoples, and former Co-Chair of the Path to Treaty Eminent Panel and Treaty Working Group.

### Mr Mick Gooda—Co-Chair

A Ghungalu and Yimin man, former Aboriginal and Torres Strait Islander Social Justice Commissioner of the Australian Human Rights Commission and former Co-Chair of the Treaty Working Group.

### Emeritus Professor Michael Lavarch AO

Former Attorney-General for Australia and former Co-Chair of the Path to Treaty Eminent Panel.

### Dr Josephine Bourne

A Gumulgal woman, Torres Strait Islander, researcher. Former inaugural board member of the National Congress of Australia's First Peoples, the Expert Panel on Constitutional Recognition of Indigenous Peoples and the Path to Treaty Eminent Panel.

### Dr Sallyanne Atkinson AO

Former Lord Mayor of Brisbane, former Chairman of Queensland Tourism and currently Chairman of the Museum of Brisbane.



Left to right, Treaty Advancement Committee: Jackie Huggins, Michael Lavarch, Sallyanne Atkinson, Mick Gooda, Josephine Bourne.



The Committee acknowledged the importance of ‘reporting back’ to First nations communities and non-Indigenous Queenslanders and commenced the delivery of planned face to face community briefings throughout Queensland. These face to face community briefings occurred in:

- Cairns – Wednesday 28 April 2021;
- Charleville – Wednesday 2 June 2021;
- Cunnamulla – Thursday 3 June 2021;
- Townsville – Thursday 17 June 2021;
- Rockhampton – Monday 21 June 2021;
- Mt Isa – Tuesday 22 June 2021; and
- Brisbane – Friday 1 October 2021.

Unfortunately, the COVID-19 pandemic, the restrictions in place at the time and the risk to travelling to communities, meant that face to face community briefings in Coen, Napranum/Weipa and Thursday Island did not go ahead as originally planned. A series of online meetings were undertaken as well as an online state-wide webinar hosted on 10 September 2021.

The Committee was also invited to meet with: Queensland Native Title Representative Body Alliance; Northern Peninsula Area Regional Council; the Rainforest Aboriginal Peoples’ Alliance, Giringun Aboriginal Corporation; Danggan Balan (Gold Coast); and Minjerribah Moorgumpin Elders-in-Council and Coo-ee Elders.

To inform their work, the Committee met with experts from a number of different jurisdictions and areas including: Geraldine Atkinson, Co-Chair First Peoples’ Assembly of Victoria; Andy Gargett, CEO, First Peoples’ Assembly of Victoria; Caitlin Reiger, Principal Advisor (Truth Telling), First Nations People’s Assembly of Victoria; Greg Phillips, Chair, Ebony Institute; Professor Mick Dodson, former Treaty Commissioner, Northern Territory Treaty Commission; Professor Tom Calma AO, Co-Chair Senior Advisory Group, National Indigenous Voice Co-Design; and leaders from the Department of Communities, Housing, Digital Economy and the Arts representing the Queensland Art Gallery/Queensland Gallery of Modern Art, Queensland State Archives, State Library of Queensland and the Queensland Museum.



*Treaty Advancement Committee community briefing, Brisbane, October 2021.*



## SECTION ONE—FIRST NATIONS TREATY INSTITUTE RECOMMENDATIONS

*Photo: Treaty Advancement Committee community briefing, Rockhampton.*

## ESTABLISHMENT OF THE FIRST NATIONS TREATY INSTITUTE

The Committee recommends that:

- 1.1 The First Nations Treaty Institute (the Institute) be created to take carriage of the actions required to progress the Path to Treaty;
- 1.2 The Institute be a statutory entity established by an Act of the Queensland Parliament;
- 1.3 A Bill to establish the Institute be introduced to Parliament by 30 June 2022; and
- 1.4 The Bill clearly state the Institute should not undertake, or be a party to, the negotiation of treaties.

### Legal Structure

It is fundamental to the treaty process that it be auspiced by a body that is independent of the Queensland Government which can work with, and reflect the aspirations of, First Nations peoples.

The Committee recommends that the Institute not undertake, or be a party to, the negotiation of treaties. Rather the Institute should provide support for the progression of meaningful and equitable treaty negotiations by negotiating a treaty-making framework with the Queensland Government. The right to negotiate treaties rests primarily with First Nations groups in reflection of their distinct rights and needs.

### Rationale

A number of options were considered in relation to the legal structure of the Institute, including:

- a statutory body;
- a Company Limited by Guarantee (the structure adopted by the First Peoples' Assembly, Victoria); and
- an organisation established under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)*.

While each of these options can achieve structural independence from both the Parliament and Queensland Government, the Committee's preference is for a statutory body, which will provide the security and certainty that is important to all.

The passage of the establishing legislation will send an unambiguous signal of the government's commitment to the treaty process. It will also mean that any future government seeking to change the process and/or structures will have to undergo a transparent process of legislative change.

The use of legislation to establish key structures to progress treaty processes is an approach used by other jurisdictions. The British Columbia Treaty Commission is progressing the British Columbia treaty process and is considered to be at the forefront of modern treaty-making between First Nations peoples and their respective governments.<sup>2</sup> The experience of the British Columbia treaty process also illustrates what a state-wide structured treaty process can achieve.<sup>3</sup>

In British Columbia it was found that sustained commitment, sufficient resourcing and equal partnerships between parties were key to securing successful treaty negotiations.<sup>4</sup> It is clear that for structural reform to achieve real and lasting change, effective and competent negotiation of treaties from both the Queensland Government and First Nations peoples, in good faith, is required.<sup>5</sup>

Accordingly, key functions of the Institute—including capacity-building and administration of the allocations from the Path to Treaty Fund—are deemed critical as part of the Institute's structure to progress the Path to Treaty.



## 2. ACKNOWLEDGEMENT

The Committee recommends that the proposed legislation will include acknowledgement that:

- 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;
- 2.2 Colonisation occurred without the consent of First Nations and often against the active resistance of First Nations peoples;
- 2.3 First Nations have never ceded and continue to assert sovereignty;
- 2.4 Colonisation occasioned devastating disruption to First Nations societies and the dispossession of First Nation Peoples of their lands, seas, waters and air;
- 2.5 First Nations have continuing responsibility for their lands, seas, waters and air in accordance with traditional laws and customs;
- 2.6 First Nations cultures and knowledge is an enormous resource for Queensland; and
- 2.7 Queensland seeks to embark on a Path to Treaty in partnership, 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.

This acknowledgement is in accordance with the *Supplementary Advice and Recommendations from the Eminent Panel on Queensland's Path to Treaty* report (Eminent Panel Recommendation), as per 6.2 – Implementation: The Path to Treaty Act.

## 3. GUIDING PRINCIPLES

The Committee recommends that the legislation and establishment of the Institute be guided by the following principles:

- 3.1 Self-determination;
- 3.2 Participation in decision-making underpinned by free, prior and informed consent and good faith;
- 3.3 Respect for and protection of culture; and
- 3.4 Equality and non-discrimination.

### Rationale

The four guiding principles will help give effect to the *United Nations Declaration on the Rights of Indigenous Peoples* (the UN Declaration) and inform the blueprint for the institutional arrangements to support the Path to Treaty. This is important because the UN Declaration:

- was adopted as a result of more than 20 years of negotiation between the Indigenous peoples and governments of the world;
- enshrines First Nations peoples' right to be different as peoples and affirms the minimum standards for the survival, dignity, security and well-being of Indigenous peoples worldwide; and
- is seen as an instrument to reset the relationships between government and Indigenous peoples.

The four principles recommended by the Committee to guide implementation of the Path to Treaty legislation encompass the rights in the UN Declaration.<sup>6</sup>

There is no pre-conceived **outcome of self-determination**, but giving effect to the rights of First Nations peoples through this principle will help to:

- affirm that human beings, individually and as peoples, are equally entitled to be in control of their own destinies; and
- affirm that peoples are entitled to participate equally in the development of the governing institutional order.

Ensuring **participation in decision-making**, including free, prior and informed consent, and good faith through the implementation of the Act and establishment of the Institute can help give effect to:

- a duty to consult with First Nations peoples;
- consent that is free of coercion and includes the right to say no to a proposal, based on full and legally accurate information; and
- ensuring that decision-making processes are fair, just and consistent with cultural practices.

**Respect for and protection of culture** can include:

- the protection and promotion of cultural identity, and languages;
- ensuring that those working in this space are culturally competent and actions are carried out in a culturally safe way; and
- respecting and protecting intellectual property rights and data sovereignty.

**Equality and non-discrimination** can:

- affirm that all human beings are born free and equal, have inalienable rights and deserve respect; and
- reduce racial discrimination, including institutional and systemic discrimination.

## 4. INSTITUTE FUNCTIONS

The Committee recommends that, as a minimum, the functions of the Institute include:

- 4.1 Co-developing a Treaty-Making Framework;
- 4.2 Building the capacity of First Nations people to engage in the treaty-making process;
- 4.3 Engaging with representative structures for First Nations peoples;
- 4.4 Facilitating treaty-making, dispute resolution and advising on a future Treaty Tribunal;
- 4.5 Undertaking and providing culturally and ethically informed research;
- 4.6 Engaging with the wider Queensland community about Path to Treaty;
- 4.7 Leading actions and recommendations that emerge from the Truth Telling and Healing Inquiry process (as referred to below);
- 4.8 Facilitating truth telling and healing, knowledge transfer and collection;
- 4.9 Administering allocations from the Path to Treaty Fund; and
- 4.10 Other functions conferred on it by the Minister, in agreement with the Institute.

### Function 1: Co-developing a treaty-making framework

A treaty-making framework (the Framework) is proposed to be co-developed by the Institute and the Queensland Government, in consultation with First Nations peoples. Development of the Framework should be informed by community consultation, priorities and aspirations.

Treaty-making frameworks can help to facilitate joint action and cooperation, and clarify roles, responsibilities and the terms around which any agreement-making takes place.

A framework is important given the complexities involved in treaty negotiations. A series of actions and multiple dialogues using fluid processes will be needed to enable individuals to make informed decisions during extensive consultation. This includes with people who are not living on their traditional lands.

This approach could secure clear commitment and an expected standard on the approach to treaty-making and treaties in Queensland. This is important considering that:

*‘treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between Indigenous peoples and states.’<sup>7</sup>*

The Framework could include key stages, principles and standards for local and regional treaty-making that will address local and regional needs. The British Columbia (BC) treaty process, for example, is based on a six-stage process:

- Stage 1: Statement of Intent to Negotiate
- Stage 2: Readiness to Negotiate
- Stage 3: Negotiation of a Framework Agreement
- Stage 4: Negotiation of an Agreement in Principle
- Stage 5: Negotiation to Finalise a Treaty
- Stage 6: Implementation of the Treaty.

The Northern Territory (NT) Treaty Commission is currently considering the BC framework. The NT Treaty Commission is also considering key negotiating principles to inform future treaties; for example, the principle that any NT treaty agreed with a First Nations group should not be considered a ‘full and final’ settlement of all historical wrongs perpetrated against First Nations.<sup>8</sup>

There are many possibilities for treaties. There can be multiple treaties at the local and regional level, as well as national level treaties. Literature has pointed to the benefits of treaties at various levels.<sup>9</sup> For example, local and regional treaties made between the government and individual First Nations, or a confederation of First Nations, could accommodate the circumstances, needs and aspirations of diverse groups.

The Committee proposes that any framework should be guided by the *UN Declaration on the Rights of Indigenous Peoples* (UN Declaration). This includes the right to self-determine how First Nations wish to identify as a party to a treaty or think of themselves as a ‘group’ or a ‘treaty negotiation party’. In accordance with the UN Declaration, recognising the rights of Indigenous peoples will help to:

*‘enhance harmonious and corporative relations between the State and Indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith.’<sup>10</sup>*

The Committee recommends that the treaty process should not be limited to groups who have formally recognised rights under the *Native Title Act 1993 (Cth)*. Instead, culturally appropriate approaches to establishing new or reframed relationships with First Nations peoples and the Queensland Government should be adopted.

The specific topics that could be on the table for negotiation will become clearer as the Path to Treaty process matures and negotiations commence. Finalisation of the Truth Telling and Healing Inquiry (the Inquiry), as well as ongoing local truth telling and healing, will inform the content of future treaty negotiations. For example, treaty settlements in Canada can include transfers of land ownership, land, water, heritage, environment and wildlife management; financial compensation; a self-governance agreement; an economic development strategy; and sharing of resource revenue.

As part of Canada's treaty process, self-government can also be established to provide authority to First Nations peoples to make decisions about internal community matters.<sup>11</sup> The Harvard Project on American Indian Economic Development, founded in 1987, conducts studies of social and economic development on American Indian reservations. It found that self-governance or enabling independent economic activity reduces dependence, encourages flexibility and participation in policy design, as well as improving coordination within and between governments.<sup>12</sup>

Experts have suggested that successful treaties between governments and First Nations peoples meet three criteria:

- recognition that First Nations peoples were the original owners of the land, and endured injustices as a result of ongoing processes of colonisation;
- the coming together of Indigenous peoples and government through a process of negotiation and agreement; and
- substantive social justice outcomes for First Nations peoples.<sup>13</sup>

Treaties are complex and will take time to reach final agreement. For example, in British Columbia (Canada) the first negotiated treaty took eight years and, to date, only eight agreements have been signed through its modern treaty negotiation process.<sup>14</sup>

## Function 2: Building the capacity of First Nations peoples to engage in the treaty-making process

The capacity of First Nations peoples is an essential precursor to ensuring that treaty negotiations are equitable and meaningful.

Supporting First Nations groups to develop their own models of treaty governance and voice is an essential element of this capacity-building. The Committee believes that support provided to First Nations groups will most likely be in the form of grants or specific programs dedicated to capacity-building or nation-building.

Treaty-readiness is considered to be when all parties to a potential treaty are in a state to exercise free, prior and informed consent to enter into treaty negotiations. Core to a treaty is the choice and consent of First Nations peoples to pursue the objectives of a treaty. What this support involves will become clear over time as communities identify what they need to be ready to negotiate treaties.

Tailored grants are provided to Victorian Aboriginal communities to build capacity and treaty-readiness through the Traditional Owner Nation-building Support Package. Under this package formally recognised groups can apply for grants of up to \$280,000 over two years, with funds used to support specific outcomes such as improving governance arrangements, boosting youth engagement or building projects to deliver economic and cultural benefits.<sup>15</sup>

The allocation of resources to support First Nations peoples will be transparent and in line with published guidelines informed by consultations with First Nations peoples.

In Queensland, there are learnings to be gleaned from other agreement-making processes, such as Native Title, which in theory provides for the development of governance models that include decision-making processes grounded in cultural integrity and legitimacy. The Committee noted that positive benefits are not always immediately felt, and that such challenges and issues should also inform this process.

Other functions of the Institute, such as community engagement and research, will ensure the function of capacity-building is informed by community voices and up-to-date research. The Independent Interim Body (Recommendation 22) will help initiate this function, along with research and community engagement processes to maintain momentum of the Path to Treaty.

## Rationale

The Queensland Government's commitment to Path to Treaty acknowledges the investment of community time and resources over many years, advocating for First Nations sovereignty and rights.

While the details of capacity-building will become clearer as First Nations' needs in Queensland are identified, research provides some valuable clues. A key finding of the 1987 Harvard Project is that 'culture matters' and that:

*'successful economies stand on the shoulders of legitimate, culturally grounded institutions of self-government. Indigenous societies are diverse; each nation must equip itself with a governing structure, economic system, policies, and procedures that fit its own contemporary culture.'*<sup>16</sup>

A ‘one size fits all’ approach is neither adequate nor appropriate. This approach has been a major cause of distress amongst First Nations peoples and has actively undermined traditional governance structures and processes. The Committee proposes that the Institute carefully consider how its resources (including any grants process) can enable First Nations organisations and groups to equip themselves in a way that is culturally grounded and legitimate.

By doing so, capacity-building will bring fairness and legitimacy to treaty negotiation processes and make space for the cultural obligations and practices of First Nations peoples’ decision-making. Capacity-building is also important to prepare First Nations peoples for treaty-making so that their rights, interests and connections to country are interpreted, recognised and implemented.

### Function 3: Engaging with representative structures for First Nations peoples

To ensure that the Path to Treaty process is informed by the voices that are deemed by First Nations peoples to be representative of First Nations peoples in Queensland, it is critical that the Institute engage effectively with existing and future representative structures

The Committee supports Voice, Treaty and Truth and the sentiment behind the *Uluru Statement from the Heart*.<sup>17</sup> The establishment of a constitutionally enshrined Voice to Parliament was regarded as the first step before Treaty and Truth. However, at this time it is by no means certain that a constitutionally enshrined Voice to the Parliament will be proposed by the Federal Government. As an interim step, a co-design process was initiated to develop the structural details of a legislated Voice with the ultimate aim of a constitutional enshrinement. However, this debate continues at the time of writing this Report.

The *Indigenous Voice Co-Design Process Interim Report* has indicated potential for representative structures to be provided for at the national, state, regional and local levels. The Committee proposes that the Institute’s Inaugural Council provide advice on potential linkages with these proposed structures.

This could include, for example, the potential role of such representative structures in appointments to the Institute Council, and the development and agreement of the state-wide treaty negotiation framework. The Committee is aware that the Queensland Government is in the initial stages of investigating options to establish a state-wide representative body.<sup>18</sup>

In any event, the Committee believes that the Path to Treaty, available now in Queensland, should not be paused to await the uncertain fate of the national process. As in Victoria and the Northern Territory, the Queensland process of truth and treaty should also proceed, particularly given that it is the Federal Government’s current position that treaty processes should be left to the states and territories.<sup>19</sup>

The Institute’s function to build the capacity of groups will ensure support for First Nations peoples is available to develop appropriate representation to get to the threshold of entering treaty negotiations.

A strong and respectful partnership with representative structures is needed for First Nations voices and interests to intersect and guide the Path to Treaty process.

### Function 4: Facilitate treaty-making and dispute resolution and advise on the future Treaty Tribunal

The Institute will facilitate treaty-making and implementation of this function. It should be guided by the agreed treaty-making framework.

While the precise nature of this function of the Institute will be guided as the treaty process and framework development unfolds, the Institute will support the facilitation of respectful and accountable negotiations, including by:

- observing and reporting on negotiation progress;
- encouraging timely negotiations;
- chairing key negotiation meetings;
- reporting publicly on key opportunities and challenges; and
- working with and supporting First Nations peoples.

This function will be informed by rights-based principles, such as ensuring free, prior and informed consent is facilitated throughout negotiations. This could be met by a number of actions, such as supporting First Nations leadership by:

- offering professional training and development programs for First Nations peoples involved in negotiations; and
- sharing research and analysis with First Nations peoples to support their negotiations.

The Committee proposes that the Institute will facilitate dispute resolution processes, which could be provided to negotiation parties prior to and during the negotiation of treaties, if requested by parties. This could be used to:

- assist First Nations groups to work together as part of their preparation towards treaty negotiations;



- assist First Nations through treaty negotiations with other First Nations groups; and
- assist negotiations between the Queensland Government and First Nations negotiating parties.

The Institute will also provide advice to government on a proposed future Treaty Tribunal, with powers to arbitrate and adjudicate on disputes occurring between the Queensland Government and First Nations peoples. Disputes could include those during treaty negotiations or disputes that arise following the signing of a treaty.

## Rationale

Treaties can provide a foundation for the relationship between the state and First Nations. In a statement about the 100th commemoration of an historic Treaty between the Government of Canada and representatives of the Gwich'in, Sahtu, Dehcho and Tłı̨cho peoples in the Northwest Territories, signed in July 1922, the Government of Canada noted that:

*'Treaties are living agreements that guide our relationship and commit us all to work together to find practical and innovative solutions to meet common objectives.'*<sup>20</sup>

It is very important for adequate support to be provided to facilitate and support negotiations that help engender trust and build high expectation relationships between negotiating parties.

The Institute, by supporting parties to deliberate and negotiate, can assist parties towards mutually beneficial agreements. Processes of dispute resolution can help ensure debate and dialogue (particularly in instances of conflict) is positively channelled into practical ends that serve all parties' interests.<sup>21</sup>

The Committee notes that the Eminent Panel recommended the establishment of a separate Treaty Tribunal:

*'to oversee the treaty-making process, monitor compliance, arbitrate and resolve disputes and review Treaties over time.'* (Eminent Panel Recommendation 6.3.6)

This is a similar approach to treaty processes in other jurisdictions. For example, the Victorian Treaty process, proceeding under the *Advancing the Treaty Process with Aboriginal Victorians Act 2018 (Vic)*, provides for establishment of a Treaty Authority- an 'umpire body' to oversee the treaty negotiation process and provide actions of dispute resolution in accordance with their agreed Treaty Negotiation Framework.

While the specifics of this body are yet to be decided, the Committee recognises that an arbitration mechanism, to provide more formal dispute resolution, is a necessary element in the treaty-making process, particularly when more informal processes of dispute resolution are not effective.

The Committee acknowledges that Tribunals have been established to support treaty processes, such as New Zealand's Waitangi Tribunal, which has the purpose of overseeing implementation of agreements following the signing of a Treaty. In 1975 the *Treaty of Waitangi Act 1975* established the Waitangi Tribunal to hear claims of Crown violations of the Treaty.

## Function 5: Undertaking culturally appropriate and ethically informed research

The Institute will undertake and promote research to support its own work and functions and will also support communities to undertake research on their own terms and aspirations. Indigenous research methodologies and approaches will support this research to ensure it is respectful, ethical, sympathetic and useful. This could include strategies such as:

- ensuring Aboriginal and Torres Strait Islander peoples are lead partners in any research project with a university or institute;
- employing and/or entering partnerships with Indigenous researchers;
- co-developing and recording research with First Nations communities;
- promotion of First Nations rights and activities relevant to the treaty process;
- action research or participatory research, such as through negotiation workshops, meetings, field trips and interviews; and
- reporting back, sharing and disseminating knowledge.

The Institute should at all times promote the highest standards of research ethics informed by the 2007 'National Statement on Ethical Conduct in Human Research' and the 'Australian Institute for Aboriginal and Torres Strait Islander Studies Code of Ethics for Aboriginal and Torres Strait Islander Research'.

Ensuring future generations and First Nations leaders have access to knowledge created or facilitated by the Institute to inform future actions and decisions is another key part of ethical research with First Nations communities. Partnerships with First Nations peoples and knowledge collection agencies, such as the State Library of Queensland, should enable First Nations peoples to have a say on how their knowledge is shared, stored and used.

Together these strategies can help to build First Nations perspectives and stories into research that is ethical and accurately reflects their cultural perspectives.



## Rationale

A high standard of research will provide for a robust evidence base to inform effective, productive and sound decisions.<sup>22</sup> This is aligned to the intent of the Treaty Working Group Report, which proposed that the Institute should be:

*'... conducting research and developing as a centre of excellence for First Nations treaty-making in Queensland.'*<sup>23</sup>

Research will be led by First Nations peoples and communities to provide a strong body of knowledge to support the Path to Treaty process. Literature points to the importance of Indigenous research not simply as a process of gaining information from people but as a long-term commitment to sharing knowledge and building ideas and relationships. Importantly this includes:

*'not simply to share surface information (pamphlet knowledge) but to share theories and analysis which inform the way knowledge and information are constructed and represented.'*<sup>24</sup>

The Institute will provide the Path to Treaty process with a research agenda that values the futures of Queensland's First Nations peoples and centralises the views and ways of understandings within and across First Nations communities. By doing so, the Institute will help to:

*'introduce communities and people who may have had little formal schooling to a wider world, a world which includes people who think just like them, who share in their struggles and dreams and who voice their concerns in similar sorts of ways... The challenge always is to demystify, to decolonise.'*<sup>25</sup>

The Institute's research will openly challenge conventional research practices, including racist practices and ethnocentric assumptions of research.

## Function 6: Engaging with the wider Queensland community about Path to Treaty

The approach to engagement should be inclusive of all Queenslanders; Treaty is everyone's business.

It is important that the Path to Treaty remains relevant both to First Nations peoples and the general public to secure its success. Leveraging the work of previous initiatives and reconciliation movements already engaged in treaty conversations with non-Indigenous Australians will help to build treaty conversations in Queensland.

Community engagement options include a regular open-day event for all to attend and learn about the treaty process and progress. Interest and feedback on such sessions could also indicate when Queensland is ready, able and willing to support the making of treaties in Queensland.

## Rationale

It is crucial that the voices of Queenslanders are involved in the progress of the Path to Treaty. While negotiation will be between First Nations peoples and the Queensland Government, a broader aspect to engagement is needed so that everyone can be informed about the Path to Treaty process and the history of First Nations peoples.

With more knowledge and information, Queenslanders are more likely to accept and understand the significance and meaning of treaty-making and make well-informed decisions for future reform proposals.

While the Institute will be a leader in driving community support from all sides, it is recognised that it cannot bear the entire load of this task. Queensland Government agencies, such as the State Library of Queensland, play a vital role in promoting the history and education of First Nations peoples to non-Indigenous Queenslanders. This includes stories on the resilience of First Nations peoples and their rich cultures and histories, and would complement the work of the truth telling and healing processes.

It is evident that continued conversations are important to treaty-making, but also to creating a sense of ownership and connection with the Path to Treaty process. As one participant said in Birdsville during the 2019 consultations, *"we need to know our history to share our future"*.

This engagement function will be supported by other functions of the Institute, such as undertaking and providing research and advice, which will support the sharing of knowledge, resources and research amongst the general public.

## Function 7: Leading functions that emerge from the Truth Telling and Healing Inquiry

The Institute will be empowered to respond to any recommendation referred to it from the Truth Telling and Healing Inquiry (the Inquiry). This could include issues relevant to treaty-making.

The Committee suggests that some of the recommendations that arise out of the Inquiry could be implemented by the Institute as future actions. Future actions could include, for example:

- to archive records collected from the truth telling and healing processes and make them available for public access;
- to keep track of implementation of the recommendations and ensure this is in line with the commitments of responsible agencies;
- to continue restorative justice and improved human rights awareness; and
- other actions identified as important to support the treaty-making process.

It is important that the findings and outcomes of the Truth Telling and Healing Processes live beyond their conclusion. This means ensuring its recommendations are implemented and its resources and records are made publicly available and are properly archived.

The Canadian Truth and Reconciliation Commission established the National Centre for Truth and Reconciliation which has the role to archive records and make them available for public access. Scholars make the point that ‘establishing the appropriate structure and ongoing governance for this work is an essential consideration.’<sup>26</sup>

## Function 8: Facilitating ongoing truth telling and healing, knowledge transfer and collection

The Committee recommends that the Institute manage a sustained process of truth telling and healing for all Queenslanders. This function of the Institute responds to the desire expressed by communities for truth telling and healing to be conducted on their own terms, and at any time during the treaty process. This also provides communities with an alternative to the formal Truth Telling and Healing Inquiry process.

Actions under this function should be informed by the *Leading Our Way Queensland Aboriginal and Torres Strait Islander Healing Strategy 2020–2030*,<sup>27</sup> which has been supported by a state-wide co-design process with First Nations peoples in Queensland. It is anticipated that the Inaugural Institute Council, in partnership with the Queensland Government, will be involved in decisions on how the Strategy will be implemented.

The return of the Star of Taroom to the Iman peoples in Queensland is an example of a local truth telling and healing story. The 160 kilogram groove stone was stolen from the Iman people in the town of Taroom in the 1970s and taken 500km to Brisbane. It has now been returned to the Iman people by a 22-day trek on foot, led by the Danalis family who relocated the groove stone in a farmer’s field. This local story brings light to the impacts of historical colonisation on First Nations peoples in Queensland and righting the wrongs of the past to facilitate healing.

### Rationale

Acknowledgement of the truth is a critical point in the journey of healing. Literature supports findings that societal groups can transcend cycles of harm if there is an ethos of acknowledgement underpinning a healing process.

A treaty with First Nations peoples provides 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. Reconciliation Australia notes that:

*‘Local truth telling is particularly powerful, especially when it occurs in small communities where people are able to develop personal relationships through the process, or build respect and understanding.’<sup>28</sup>*

As a result, local truth telling and healing will be an ongoing and critical element of the Path to Treaty process.

## Function 9: Administering allocations from the Path to Treaty Fund

Further information about this function is considered in Section Three—Path To Treaty Fund Recommendations on page 35.

## Function 10: Other functions conferred on it by the Minister, in agreement with the Institute

The Institute will be an ongoing entity whose role will adapt as the process of treaty-making in Queensland matures. This will ensure that the Institute will continue to support changing needs during and following treaty negotiations.

If the Institute seeks an additional function, it should be able to request the Minister to confer this function and that this request be considered within a reasonable timeframe, and if not accepted, that clear reasons be provided as to why this has been refused.

Conversely, the Minister should also be able to confer additional functions on the Institute to meet emerging needs. However, in line with the principles of self-determination and free prior and informed consent, any new function must be agreed by the Institute Council.

## 5. INSTITUTE POWERS

The Committee recommends that the powers of the Institute include, at a minimum:

- 5.1 Powers to administer allocations from the Fund;
- 5.2 Powers to create and develop intellectual property and build the data sovereignty of Aboriginal and Torres Strait Islander peoples; and
- 5.3 Powers to do all things necessary to carry out its functions.

The Institute's powers need to be sufficient to allow it to perform its functions.

It is recommended that the Institute's powers to support the treaty-making process include:

- entering into agreements, partnerships and contracts in pursuit of the objectives of the Act;
- making of grants of monies;
- employment of staff and consultants; and
- acquiring and disposing of assets.

The \$300 million Path to Treaty Fund (the Fund) was announced in the Queensland Budget<sup>29</sup>. In addition to powers for the Institute to administer allocations from the Fund, other powers recommended by the Committee are to:

- act as trustee of money and other property vested in the Institute on trust;
- accept gifts, grants, bequests and devises made to it; and
- borrow money.

The Committee proposes that the Institute should, as part of its power to create and develop intellectual property, promote the data sovereignty of Aboriginal and Torres Strait Islander peoples in accordance with First Nations rights. This would help recognise First Nations peoples' cultural authority and the specific rights and interests underpinning their intellectual property, data sovereignty and resources.

The Institute could, as an example, engage in culturally integral data management processes to manage, store, and collect data with the free, prior and informed consent of those individuals, community members and First Nation bodies who have the appropriate cultural authority over this data.

It is proposed that the Inaugural Institute Council should consider how intellectual property management and collection can be culturally integral and sufficiently protect knowledge, including sacred knowledge, throughout the Path to Treaty process.

## Rationale

The Institute represents a new way of doing business through its independent responsibility to lead the process of treaty-making in partnership with the Queensland Government. While the Institute will not negotiate treaties, it will require a level of authority in order to progress policy and administer the Path to Treaty process.

The Institute work will need to do this in a way that gives effect to First Nations communities' rights, and under this function, it is focussed on their right to data sovereignty. Indigenous Data Sovereignty has been described as:

*'the right of Indigenous people to exercise ownership over Indigenous data. Ownership of data can be expressed through the creation, collection, access, analysis, interpretation, management, dissemination and reuse of Indigenous data.'*<sup>30</sup>

The promotion of these rights would ensure that the Institute's management of data and intellectual property is aligned and integral to First Nations cultures and perspectives.

## 6. INAUGURAL INSTITUTE COUNCIL

The Committee recommends that an Inaugural Institute Council be established to oversee the operations of the Institute immediately upon the Institute legislation being enacted and that it be:

- 6.1 Appointed by the Governor-in-Council for a period of no more than two years;
- 6.2 Comprised of eight members, and two Co-Chairs, all of whom will be Aboriginal and/or Torres Strait Islander persons;
- 6.3 Reflective of the diversity of Queensland's First Nations peoples across the state;
- 6.4 Gender balanced; and
- 6.5 Co-Chaired by a woman and man who will be selected by members of the Inaugural Council.

The scope and responsibilities of the Inaugural Institute Council will be the same as the Institute Council.

### Rationale

Ultimately, the governance of the Institute will be in the hands of individuals who have been chosen to represent – and who have the support of – First Nations peoples around Queensland. However, the representative structures (discussed elsewhere) may take some time to develop and, in the meantime, the Committee recommends an interim process to ensure the Institute's work can get underway. An Inaugural Institute Council will be able to progress the necessary work while the details of longer-term representation are being resolved.

In making appointments to the Inaugural Institute Council, the Queensland Government, supported by an Independent Interim Body (see Recommendation 22), will still consult with First Nations peoples to ensure Inaugural Institute Council members are broadly supported by communities. Elements for consideration include Aboriginal and Torres Strait Islander empowerment, gender equity and geographical representation.

The Committee recommends that gender balance be legislatively guaranteed in both the membership and Co-Chair structure of the Institute Council to ensure appropriate representation of women and men. Inaugural Institute Council members will select the Co-Chairs, following appointment of the eight members.

## 7. INSTITUTE COUNCIL

The Committee recommends that:

- 7.1 Members of the First Nations Treaty Institute Council (the Institute Council) be Aboriginal and/or Torres Strait Islander persons directly appointed by First Nations representative mechanisms and structures.

Following consultation with Aboriginal and Torres Strait Island leaders and communities, the Inaugural Institute Council will advise the Queensland Government on how individuals should be recommended by First Nations representative structures for appointment to the ongoing Institute Council.

### Rationale

The Committee acknowledges that the Institute's functions must be aligned to the priorities and aspirations of Queensland First Nations peoples in order to be effective. Balancing representation with the huge diversity of lived experiences and knowledge across First Nations peoples is a complex matter that the Inaugural Institute Council will need to consider in order to advise the Queensland Government.

Advice from Aboriginal and Torres Strait Islander leaders and stakeholders will help to ensure individuals with cultural authority, or the responsibility for upholding cultural law and customs, inform the Institute's governance and representation.

Direct links with representative structures for First Nations peoples through the Institute Council, which have evolved out of authentic co-design and partnership processes, will help to minimise distance from the communities, reduce bureaucracy and centre First Nations peoples in the policy and progress of Path to Treaty. The Committee's view is that the evolving Voice Co-Design processes at the Commonwealth and State Government level may guide the eventual formation of the Institute Council.<sup>31</sup>

It is acknowledged that there are other existing governance structures and representative bodies, should the Commonwealth-led local/regional voice not come to fruition, for example the recently established Aboriginal and Torres Strait Islander Housing Queensland peak body. Structures such as these could potentially be used as a guide for the appointment of the Institute Council.



## 8. INSTITUTE STAFF

The Committee recommends that the:

- 8.1 Positions of Chief Executive Officer and Council Secretary of the Institute be established;
- 8.2 Chief Executive Officer and Council Secretary be appointed by the Institute Council;
- 8.3 First Chief Executive Officer and first Council Secretary should be appointed by the Inaugural Institute Council;
- 8.4 Position of the Chief Executive Officer be classed as a 'special measure' position in that it must be filled by an Aboriginal and/or Torres Strait Islander person;
- 8.5 Term of appointment be:
  - 8.5.1 for the first CEO – not more than two years; and
  - 8.5.2 for any subsequent CEO – not more than three years.

The CEO is a key position that will be responsible for the day-to-day operations of the Institute and the administrative arm that implements the Institute Council's decisions. The CEO will act in accordance with any policies determined and any directions given by the Council in writing. This may include delegated decision-making on matters such as staff management and grant-making. A CEO can be re-appointed for consecutive terms with a maximum of nine years' consecutive service.

The Council Secretary will support the Institute Council to comply with its governance requirements. Like any organisation, the Institute will require strong measures to ensure best practice and robust governance. A key part of this is having a mechanism to consider issues and provide advice—independent from the CEO—on Council ethics, probity and governance issues.

### Rationale

The administrative arm will provide day-to-day operational support for the Institute, under the direction of the CEO. It is recommended the CEO be delegated the decision-making authority regarding the allocation of funding, to provide a 'separation of powers' between the Institute Council's strategic role and the Institute's day-to-day administration.

The Council Secretary will help to support self-determination, internal learning and adaptation. Considering and dealing appropriately with difficult questions that will challenge the governance and functioning of the Institute will be a key to ensuring its success.

Given there will be extensive engagement with First Nations Queenslanders, it will be important for staff to possess the necessary cultural capability skills and experience to work with Aboriginal and Torres Strait Islander peoples.

## 9. ADVISORY COMMITTEES

The Committee recommends that:

- 9.1 The Institute Council may establish Advisory Committees;
- 9.2 The legislation establishing the Institute mandate the two following permanent Advisory Committees:
  - 9.2.1 an Audit, Finance and Risk Management Advisory Committee; and
  - 9.2.2 a Research and Ethics Advisory Committee;
- 9.3 Any Advisory Committee must be chaired by an Institute Council member; and
- 9.4 The Institute Council cannot delegate any of its powers and/or functions to any Advisory Committee it establishes.

Advisory Committees will strengthen the Institute's governance structure and ensure the required skills and knowledge are guiding the Path to Treaty. The Institute will require access to knowledge and experience that is not directly represented on the Institute Council, such as in media, research, issues impacting people with disability, youth, LGBTQIA+ and Elders.

Advisory Committees will be chaired by an Institute Council member, and will include external stakeholders such as community leaders, experts, representatives and truth telling and healing organisations.

A Specific Groups Advisory Committee, such as a Youth and Elders Advisory Committee, was also considered and could be developed further by the Inaugural Institute Council. Another key group considered was non-Indigenous stakeholders and organisations. Having structural representation of specific groups within the Institute provides capacity for it to undertake policy development on key treaty-related matters that will be informed by the perspectives and knowledge of First Nations peoples and non-Indigenous Queenslanders. The Committee's view was that the Inaugural Institute Council will be best placed to make these decisions.

The Committee also considered an Advisory Committee to oversee the independent assessment of grant applications and ensure transparency and legitimacy.

## 10. REPORTING

The Committee recommends that:

- 10.1 The Institute provide an Annual Report to the Queensland Parliament; and
- 10.2 The Institute develop and publish a Strategic Plan every four years.

The Committee recommends two key accountability mechanisms for the Institute: a Strategic Plan and an Annual Report. The legislation will include a provision that the Institute must present a Strategic Plan every four years, with a review conducted during the third year. The Strategic Plan will include as a minimum:

- an articulation of the Institute's strategic intent/direction;
- goals and actions to implement the Institute's strategic direction;
- the administration of allocations from the Path to Treaty Fund;
- expected outcomes or performance indicators; and
- intended accountability measures.

The legislation will also provide for the Institute to produce an Annual Report to be tabled in Parliament and include:

- yearly progress on the implementation of the Institute Strategic Plan;
- Audited Financial Statements for the year; and
- any other matter pertinent to the operations of the Institute.

### Rationale

Reporting must respect the valuable, rich history, intellectual and sacred knowledge of First Nations peoples. It should be informed by the cultural and political frameworks that have guided First Nations peoples' governance and life. It is critical that the Institute honours the right of First Nations to control their intellectual property through its work and communication.

The Committee recognises the critical importance of the Institute meeting best practice in its operations, ensuring it is transparent in its decision-making and accountable to First Nations people and the wider Queensland community.

The Strategic Plan and the Annual Report will be core mechanisms to ensure transparency and clarity of purpose.

### Rationale

Specific skills and expertise are required to run an organisation such as the Institute. Audit, finance and risk management expertise is permanently recommended so that the Institute has access to advice on funding, compliance, regulation and financial stewardship, asset dealings, receiving annual reports and managing the allocations from the Path to Treaty Fund.

Demonstrated responsibility and legitimacy in financial management will be built into the financial processes and audit of issues that the Institute may engage in.

The second permanent Advisory Committee recommended is a Research and Ethics Advisory Committee. It will ensure that the Institute's governance can adequately support the Institute's research, ethics and human rights functions. This includes working closely with the Institute's staff to conduct research ethically and in accordance with First Nations peoples' and human rights.

Advisory Committees are commonly established to support treaty processes and can address shortfalls and issues that emerge during the treaty process. For example, between 1991 and early 2002, the British Columbia Government restructured its treaty process to address concerns that the provincial mandate did not:

- take into account what British Columbians want in a Treaty;
- represent the public at the negotiating table; or
- share knowledge of what is being negotiated until the Treaty is completed.

The Treaty Negotiations Advisory Council, regional advisory committees and local Treaty advisory committees were established to address these concerns.<sup>32</sup>

The Institute might consider similar structures to support its conduct and adequately involve the wider Queensland community in the Path to Treaty process.

The Committee acknowledges the difficulty in achieving sufficient representation across all interest groups through the proposed representative basis for the appointment of Institute Council members. Advisory Committee membership is a mechanism to extend representation to additional groups and cohorts.

The place and distinction of Elders in First Nations communities was also considered by the Committee. Elders' voices and knowledge should guide the Institute leadership and be a key to ensuring future leadership, youth and the maintenance of traditions, values, languages and history are at the forefront of this process. Our past informs the present, and the present provides the opportunity to narrate a more creative, innovative, and optimistic educational future that is both self-determining as well as transformative.

## REVIEW OF THE LEGISLATION

The Committee recommends that:

- 11.1 The Act establishing the Institute be reviewed in the fifth year of the Institute's operation.

### Rationale

The Path to Treaty legislation establishing the Institute is breaking new ground in pursuit of treaties in Queensland; by necessity, it will encompass new and innovative ways of working across a wide range of activities. These include building the capacity of Aboriginal and Torres Strait Islander communities as potential parties to a treaty, research, developing a treaty-making framework and engagement with the wider Queensland community.

Given that many legislated functions of the Institute are novel—such as achieving a state of treaty-readiness in potential parties to a treaty—the Committee believes it will be necessary to review the operations of the legislation to evaluate: whether the legislation is generally enabling progress on the Path to Treaty; the Governance of the Institute; and, the operations of the Institute in carrying out its functions, including the management of the Path to Treaty Fund.

The review will be undertaken in consultation with the Institute and First Nations before recommending any amendment/s to the legislation necessary to progress the Path to Treaty.



## SECTION TWO—TRUTH TELLING AND HEALING PROCESS RECOMMENDATIONS

*Photo: Treaty Advancement Committee invite to community briefing, Atherton Tablelands.*



## 12. STAGED TRUTH TELLING AND HEALING

The Committee recommends that a staged approach be adopted for a Truth Telling and Healing Process consisting:

- 12.1 A First Nations led engagement with public institutions to build understanding in the Queensland community of the reasons and importance of the Path to Treaty; and
- 12.2 A formal Inquiry process through a legislated model created to conduct Truth Telling and Healing.

### The importance of truth telling

In recent times, the importance of confronting past injustices to help societies move forward has been observed across the world. Truth telling is a method used to support a nation transition from old ‘dishonourable’ ways to new ways of working together that are honourable and just. This is primarily through chronicling the truths of the past and the lived experiences of the survivors of injustices.

Truth telling is critical to reframing the relationship between First Nations peoples and non-Indigenous Queenslanders. The centrality of truth telling was a common theme raised by participants during the 2019 consultations with the Treaty Working Group with comments including:<sup>33</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.”*

*“As a Queenslanders 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.”*

*“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.”*

The approach of a society engaging in a structured process of truth telling has been described as a mode of transitional justice, which is:

*‘a response to systematic or widespread violations of human rights. It seeks recognition for victims and promotion of possibilities for peace, reconciliation and democracy. Transitional justice is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse. In some cases, these transformations happen suddenly; in others, they may take place over many decades.’<sup>34</sup>*

### A staged approach to a truth telling and healing process for Queensland

The Committee recommends that the formal Truth Telling and Healing Inquiry (the Inquiry) not be a function of the Institute. Rather, the Committee recommends separating this function and adopting a staged approach to truth telling and healing. The first stage addresses the lack of understanding in the wider Queensland community about the history and experience of colonisation of First Nations peoples and why First Nations advocate for a treaty or treaties to properly ground their relationship with the government. The second stage is the establishment of a formal Inquiry through a bespoke model requiring legislative action. This Inquiry would have some features of a Commission of Inquiry but is customised to match the requirements of First Nations peoples and which adopts a non-adversarial and non-legalistic approach to conduct truth telling.

There have been a range of truth telling processes in Australia such as the Human Rights Commission Inquiry into the forced removal of children (stolen generations). Notwithstanding these previous processes there remains a considerable gap in understanding by much of the non-Indigenous community about the history of colonisation and the impact of government policies on the current life experiences of many First Nations peoples. This gap makes a shared understanding on the need and the potential scope of a treaty process more difficult to achieve.

The Committee believes that the public institutions of memory and story—the State Library of Queensland, the Queensland State Archives, Queensland Museum, Queensland Art Gallery/Queensland Gallery of Modern Art—and the many regional and local Councils and bodies have an important role in expressing the reframed relationship between First Nations and the Queensland Government. These institutions should engage deeply with First Nations and play an important leadership role in telling the stories of First Nations and contributing to truth telling and healing.

It is proposed that the Independent Interim Body (see Recommendation 22) auspice the engagement of First Nations with the public institutions and commence the process of localised truth telling to prepare the ground for the formal Inquiry. The objectives would be:

- a whole of Queensland strategy to harness the public institutions to assist in telling the story and revealing the history of First Nations and the colonisation project;
- to engage with local and regional bodies (libraries, galleries, museums and historical societies) to prepare the ground to support the formal Truth Telling and Healing Inquiry; and
- to facilitate First Nations leadership of local truth telling processes.

## Truth Telling and Healing Inquiry

After much investigation and consideration, the Committee recommends the establishment of a Truth Telling and Healing Inquiry (the Inquiry). The Inquiry will provide First Nations peoples and all Queenslanders the opportunity to reveal the hidden and often destructive consequences of colonisation, and to have it shared and witnessed on a public scale.

The Inquiry will be a key driver to challenge the mainstream view of history and promote a critical understanding on how this continues to play a central part in diminishing First Nations rights and the continuing disadvantage experienced by First Nations peoples compared to the non-Indigenous community.

In some jurisdictions, truth telling has occurred through a Commission of Inquiry model. These are established by government for a certain period of time to engage with a targeted group to document and record events and injustices of the past. A well run and successful commission has the power to *‘shift national narratives and attitudes and can have concrete effects on education and public disclosure’*.<sup>35</sup>

Some processes such as those which occurred in Germany and Japan after the second World War required the perpetrators of atrocities to be confronted and placed on trial for their crimes. Others, such as, the Truth and Reconciliation Commission in South Africa had a different focus. Then Justice Minister, Mr Dullah Omar, said:

*‘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>36</sup>

Each jurisdiction which has embarked on a truth telling process has to customise a model which meets the specific circumstances of the community, particularly the position of the group which has experienced trauma. In Queensland, the Committee believes a formal Inquiry conducted with the benefit of bespoke legislation developed in conjunction with First Nations will best serve the interests of First Nations and the wider Queensland community.

## Rationale

The functions of the Institute cover the many and varied tasks required to progress treaty-making. It is important that the Institute maintains focus on these functions.

The Committee recognises that there are clear connections between truth telling and treaty-making. It is envisaged that the Institute will undertake certain actions of truth telling and healing but that these will be limited, for example involving the history of a particular area that may be the subject of treaty discussions. This is different to the Truth Telling and Healing Inquiry that aims to chronicle the history of Queensland at a state-wide level.

Inquiry powers normally include calling witnesses, and in some instances compelling the production of documents, and then making findings and recommendations. A body like the Institute would not normally operate in this way. The requirement to conduct an Inquiry would create unnecessary complexity and could distract the Institute from its core business of supporting treaty-making in Queensland. The Committee considered that formal truth telling would be more properly conducted by a body specifically established and empowered to undertake such a task.

Evidence from other jurisdictions that have undertaken or are undertaking formal truth telling type exercises points to the formal process of truth telling being an onerous task that merits the full attention of the body undertaking it.<sup>37</sup> Customised variations of Inquiry models are either being used or are proposed in other Australian jurisdictions to progress formal truth telling in parallel to their treaty processes.<sup>38</sup>

The Committee considered the question of timing. It is recognised that an Inquiry conducted through a bespoke model underpinned by legislation will mean that both the Institute and the formal truth telling and healing process will likely commence at a similar time depending on the Queensland Government’s and the Parliament’s legislative program. It would be desirable to progress truth telling in advance of the formal Inquiry and this is one advantage of the two prong approach involving the Independent Interim Body taking a facilitating role prior to the formal Inquiry.

The Committee sought views from experts and briefed communities on this proposed departure from the Eminent Panel's recommendation that the Institute also conduct the Truth Telling and Healing Inquiry. There was unanimous support from those consulted for truth telling and healing to begin prior to, and be independent of, the establishment of the Institute.

As an independent process the Inquiry will decide on its methodology, support required for participants, and the relationship between the Inquiry process and the public and media. This will ensure the trauma associated with participants telling their story, to either a small private audience or publicly to a wide audience, is addressed appropriately.

## Other models considered

Several structures to conduct the truth telling process were considered by the Committee.

**Commission of Inquiry:** A Commission of Inquiry could be established under the Queensland *Commissions of Inquiry Act 1950* to conduct the truth telling process.

**Human Rights Commission:** Another option considered was to provide the truth telling inquiry function to an already established body, such as the Queensland Human Rights Commission.

**Parliamentary Committee:** Parliamentary Committees are made up of members appointed by the Parliament to undertake a particular task or function. Committees can provide for community submissions and the taking of evidence. The Parliament could appoint a select Parliamentary Committee to investigate Queensland's colonial and contemporary treatment of First Nations peoples. A standing Parliamentary Committee could also be established for the term of the Queensland Parliament.

**Taskforce:** The Queensland Government could establish a truth telling and healing taskforce to lead and conduct truth telling and healing. The taskforce could be supported by staff and a supporting unit set-up in a government department. An example of this was the Communities Future Task Force, established in early July 2006 by the then Premier, Peter Beattie, to respond to the high levels of community concern following the announcement of the construction of two dams to be built in South-East Queensland.

While Parliamentary Committees and taskforces can be established relatively quickly, the time and resources that the truth telling and healing process will require is considered to be outside the capabilities of these two models. For example, membership of Parliamentary Committees is limited to members of Parliament who will have to conduct this Inquiry alongside their usual representative and parliamentary responsibilities.

There are some benefits to establishing a Commission of Inquiry model and using the powers granted under *Commissions of Inquiry Act 1950*. This option could be reasonably quick to start and it does avoid the complexity of bespoke legislation. That said, it is difficult to avoid a Commission becoming adversarial, with its judicial like powers and criminal provisions for contempt. It does not readily lend itself to a culturally appropriate model which supports First Nations oral traditions of historical story telling.

The Committee notes that the Queensland Government's commitment to a 'reframed relationship' is based on recommendation seven of the Reparations Taskforce, which called for improved relationships between Aboriginal and Torres Strait Islander peoples and the government. Intentions for closure were made clear in the Interim Report of the Reparations Taskforce:

*'a view consistently presented at the consultation meetings was that what most people wanted was closure on this very traumatic part of Queensland's history... every time this issue was raised, including in the current process, it meant reliving the treatment that people were subject to when they were restricted to those old missions and had their wages and savings confiscated, along with the associated trauma.'*<sup>39</sup>

The heart of the formal truth telling process should be about healing from the past, restoring dignity of First Nations and assisting a respectful and mutually beneficial relationship between First Nations and the state. This reframed relationship must include First Nations in the design of the Inquiry and this is best delivered through a bespoke process.

## 13. INQUIRY OBJECTIVES

The Committee recommends that the Truth Telling and Healing Inquiry (the Inquiry) should, at a minimum:

- 13.1 Engage with communities to inquire into and chronicle the history of colonisation and the impacts on First Nations peoples and all Queenslanders;
- 13.2 ‘Do no harm’ in the conduct of the Inquiry by adopting the principles of free, prior and informed consent and a trauma-informed approach;
- 13.3 Promote public awareness, inform education and develop shared understandings of First Nations cultures, histories, languages and traditions; and
- 13.4 Link with the treaty-making process and provide recommendations to inform treaty-making.

In the formal sense, it is the Queensland Government which will establish the truth telling and healing Inquiry. It is important, however—and consistent with a reframed relationship with First Nations—that the design of the Inquiry including setting the Terms of Reference be undertaken collaboratively with First Nations. The Committee proposes that the government engage with the Independent Interim Body to facilitate First Nations involvement in decision-making. As a guideline the Committee recommends that the Inquiry have clear objectives, detailed below.

### Objective 1: To engage with communities to inquire into and chronicle the history of colonisation and the impacts on First Nations peoples and all Queenslanders

This objective is broad and aims for Queensland’s First Nations’ experiences of historical colonisation, and the effects of this experience on the present, to be inquired into and chronicled. Having this evidence heard, witnessed and recorded through a state-wide and formal truth telling process will promote greater public awareness of First Nations lived experiences, as well as the ongoing systemic impacts of colonisation on First Nations peoples.

Historical colonisation encompasses events and incidents including (but not limited to) the violence experienced during the frontier wars, killings and massacres and cultural violations such as breach and denial of First Nations law, and the profound impacts of the more recent protectionist and assimilationist policy periods.

The Inquiry will engage with communities most affected and enable their stories to be witnessed and heard. This will be through several formats such as written/individual statement taking, public hearings and community events that will be designed to respect the need to witness and acknowledge the story being told.

Participants will most likely be Aboriginal and Torres Strait Islander peoples although the experiences of the wider community are fundamentally important.

The involvement of Elders and young people in the Inquiry process was stressed during consultations in Phase One of the treaty process as particularly important so that elders’ stories and knowledge can be recorded, and First Nations and non-Indigenous youth learn about the history of colonisation and Queensland’s past.

The Committee acknowledges that the Inquiry should build upon the important work of previous historical research, inquiries, reports, and reviews, avoiding a duplication of effort. Some of these include:

- Queensland Stolen Reparation Wages Taskforce;
- Stolen Generations – *Bringing them Home Report National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*;
- Royal Commission into Aboriginal Deaths in Custody;
- Royal Commission into Institutional Responses to Child Sexual Abuse; and
- Queensland Child Protection Commission of Inquiry.

Commissioning local work and research published by historians and researchers will also support the mapping and piecing together of the colonial history of Queensland. The Committee recognises that there have been many great examples of Truth Telling conducted to date, and that this should be collated and brought together, along with individual stories and testimony, to narrate the realities of past injustices and colonisation.

### Rationale

Not setting definitive timeframes or limiting the issues covered in the Inquiry is a way to promote a comprehensive recognition of the past that could reveal human rights abuses against First Nations peoples. This could allow for specific incidents to be well documented and identify further investigation requirements. Similarly, the Yoorrook Justice Commission in Victoria has a broad mandate to investigate both historical and ongoing injustices committed against Aboriginal Victorians since colonisation by the State and non-State entities, across all areas of social, political and economic life.

Past injustices that have remained unknown for decades or even centuries can be made public through a truth telling process. Consideration of the subject matter focus and scope should not be too limited so that the root cause of hurt can be addressed and the effects of the past and intergenerational trauma must be addressed carefully. This is in recognition of the many ways and realities of discrimination that Aboriginal people have experienced and the systemic impact of how colonisation functions across today’s society. The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration), states that it is:



*‘Concerned that Indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonisation 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.’<sup>40</sup>*

It was discussed that engagement with non-Indigenous Queenslanders could be conducted prior to participant testimonies being provided so that their role as an audience is clear and understood.

## **Objective 2: To ‘do no harm’ in the conduct of the Inquiry by adopting the principle of free, prior and informed consent and a trauma-informed approach**

This objective will support healing for groups and individuals through acknowledgement and validation of past events. The Inquiry will likely employ several different methods tailored to the specific group, area or issue under investigation. However, it must be a process that centres First Nations voices and needs around how they should be engaged in the process to tell their story safely and comfortably.

The Inquiry’s actions should promote individual and group healing through empathetic, supportive and safe truth telling actions. These may include:

- ensuring testimony is taken in a safe space for all and with a trauma-informed approach;
- using local services; and
- making clear that participation is not mandatory.

Ensuring there is no mandatory requirement for participants to provide testimonies or oral histories recognises that the Inquiry is not necessarily the right avenue for everyone’s truth telling and may be too traumatic for some.

Opportunities for additional truth telling through the Institute (see Recommendation 4), specifically ‘facilitating ongoing truth telling, healing and knowledge transfer’, could cater for alternative needs and processes of truth telling and healing, if needed.

### **Rationale**

Many studies have examined the ongoing trauma experienced by peoples subject to colonisation. The trauma of colonisation is felt most acutely by those who have suffered from dislocation from country and family, being taken from their parents, losing their children, and enduring brutalities and institutional racism. Trauma is also felt through the generations.

The Canadian Truth and Reconciliation Commission (CTRC) used multiple ways to create ‘safe spaces’ such as gathering statements through sharing circles, organising ceremonies at the beginning of proceedings to recognise and celebrate, as well as revitalising Indigenous language as an important aspect of truth telling.

Support for those involved in truth telling should be freely available and appropriate for individual circumstances. One Elder told the Committee they will not participate in this process because of the memories that will unfold from even mentioning the suffering their Elders experienced. Understanding these kinds of concerns and trepidation must be foremost in the consideration of a trauma-informed approach. This is a prime example of where the concept of ‘doing no more harm’ is practiced and why free, prior and informed consent is a critical element of the truth telling process.

Empathy is thus important. There will be confronting histories being provided that non-Indigenous peoples will bear witness to and provoke a process of critical self-reflection. Therefore trauma-informed approaches are also very important for non-Indigenous Queenslanders, and why engagement with this group is key to supporting the process of healing.

This focus on healing and providing closure means that the truth telling process should also not be adversarial in nature i.e. focused on determining a single or definite understanding of what occurred. Having these stories listened to by the general public and influencing public awareness of these experiences is the focus, even if stories are vague or conflicting. At the heart of this truth telling process is healing from the past and restoring dignity of the nation state.

## **Objective 3: To promote public awareness, inform education and develop shared understandings about First Nations cultures, histories, languages and traditions**

The Eminent Panel and Treaty Working Group recommended that the resources, materials and testimony gained from the truth telling process be used:

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

The Queensland Government noted in its response that it anticipates material developed through a truth telling process will be retained by state museums and libraries. It also noted that it will support Queensland schools to access and use resources generated as source material to support the teaching of a complete history of Queensland particularly histories from an Aboriginal and Torres Strait Islander perspective.

It is anticipated, in line with the Queensland Government's response to the Eminent Panel Recommendations, that the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships and the Department of Education will work with the 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.

Responsibility for the holding, archiving and sharing of the evidence collected by the Inquiry will require further consultation. It is proposed that the Institute could be the entity to fulfill this purpose, and this may be a recommendation of the Inquiry. This process will be developed in consultation with the Department of Communities, Housing, Digital Economy and the Arts representing the Queensland Art Gallery/Queensland Gallery of Modern Art, Queensland State Archives, State Library of Queensland and the Queensland Museum.

## Rationale

In Canada there is ongoing unearthing of the evidence of hundreds of deaths of children at residential schools, which was a topic uncovered in Canada's Truth and Reconciliation Commission (CTRC). Queensland's Inquiry process could reveal similar injustices of past events that have potentially remained unknown or hidden for decades or even centuries. It is possible that the Canadian experience of deeply hidden events could have a local equivalent and:

*'until there is truth telling in Australia about the colonisation process....the process of reconciliation remains superficial.'*<sup>41</sup>

Indeed, the ongoing legacy of colonisation experienced by First Nations peoples remains little recognised or understood.<sup>42</sup> Discriminatory and racist policies and practices continue to impact and promote socio-economic disadvantage. Symptoms of trauma are often expressed in socio-economic and health indicators, including disproportionate incarceration rates and lower life expectancies. The Commonwealth Government, in its 2020 *Closing the Gap National Agreement* (Section. 59(a)) includes a commitment to support Aboriginal and Torres Strait Islander culture by ensuring:

*'government organisations identify their history with Aboriginal and Torres Strait Islander people and facilitate truth telling to enable reconciliation and active, ongoing healing.'*<sup>43</sup>

Similarly, the Northern Territory *Barunga Agreement 2018* acknowledges the:

*'deep injustice done to the Aboriginal people of the Northern Territory, including violent dispossession, the repression of their languages and cultures, and the forcible removal of children from their families, which have left a legacy of trauma, and loss that needs to be addressed and healed.'*<sup>44</sup>

Reconciliation can be supported by education and an openness to confront racism. Public events and a comprehensive community engagement strategy conducted by the Inquiry could help to foster better relationships with Aboriginal and Torres Strait Islander peoples. Education and engagement activities also provide good opportunities for broader participation, information and knowledge sharing.<sup>45</sup>

The storage of material collected and recorded by the Inquiry is an important consideration and provides an opportunity to inform ongoing community understanding and education. The Terms of Reference of the CTRC specifically provided for a National Centre for Truth and Reconciliation to be established, vested with the responsibility to:

*'ensure that all materials created or received pursuant to this mandate shall be preserved and archived with a purpose and tradition in keeping with the objectives and spirit of the Commission's work.'*<sup>46</sup>

## Objective 4: To link with the treaty-making process and inform treaty-making

The Inquiry will research and record past assimilative and protectionist-based policy and the ongoing impacts still being felt today. This research and work will provide insights to inform the treaty-making process, including identifying topics for negotiation, or implementation of other treaty-based mechanisms such as reparations and additional truth telling. In this way, reconciliation will be continued through truth telling and healing led by the Institute well after the formal Inquiry has been completed.

## Rationale

The Committee acknowledges the importance of continuing truth telling to empower Aboriginal and Torres Strait Islander people, promote healing and build support for reconciliation.

As an example, Victoria has explored the naming of public places and preserving, recovering, teaching and sharing traditional languages as areas where progress can be made to support treaty-making and creating honourable and respectful futures.

## TERM OF THE INQUIRY

The Committee recommends that:

- 14.1 The Inquiry have a three-year term.

The Committee believes that with sufficient engagement and support from the Queensland Government to access existing work and research to support the chronicling of colonisation of Queensland, along with adequate financial backing to conduct its inquiry, a three-year timeframe is appropriate. This is a common length of term for Inquiries of this nature that seeks to ensure a balance between being comprehensive while guarding against losing momentum and focus. This also takes into account that additional truth telling and healing led by the Institute will continue as a function beyond the three-year time frame of the formal Inquiry.

### Rationale

The Committee acknowledges that the formal Truth Telling and Healing Inquiry has an arduous task in uncovering the history of the colonisation of Queensland at a state-wide level.

The term length was guided by examples of other truth telling processes. For example, the Victorian Government and the First Peoples' Assembly established their truth and justice process, the Yoorrook Justice Commission, in May 2021 and it is due to provide its final report by the end of June 2024, a period of just over three years. It was noted that a survey of best international practice conducted by the Northern Territory Treaty Commissioner also indicated that a defined timeframe for a truth telling process in the order of three years appeared to be optimal.

Given that Aboriginal and Torres Strait Islander societies have borne the destructive impact of colonisation and it's their stories which will be the spine of the truth telling and healing process, it is appropriate the Inquiry is comprised of a majority of First Nations members and have an overall membership which will enjoy the trust of First Nations. Equally, each of the Inquiry members needs to hold the respect of the wider Queensland community.

It is crucial that there be gender representation amongst the Inquiry members to facilitate the participation of both women and men to tell their stories in safe places. The experience of Aboriginal and Torres Strait Islander women and men in Queensland can be vastly different. Not only were women subject to racist policies, they have also experienced the gendered violence of colonisation.

The process of selecting members is a crucial consideration that will establish the legitimacy and standing of the Inquiry. The process cannot be a matter solely for government and must have the clear and direct involvement of First Nations peoples.

Insight on how this could be implemented can be drawn from the Victorian Yoorrook Justice Commissioner selection process, which published the Key Selection Criteria for Commissioners and undertook a transparent process for assessment of candidates. This included:

- Expressions of Interest;
- publication of shortlist and public statement;
- interviews;
- opportunity for public feedback on shortlisted candidates; and
- Assessment Panel recommendations to the Premier.

Further guidance and advice should be provided to the Queensland Government by the Independent Interim Body mechanism outlined in Recommendation 22.

While it is not envisaged that the Inquiry will be legalistic in approach, the Inquiry will meet proper standards of procedure and may on occasions need to utilise powers to compel production of documents. Accordingly, at least one member should have an extensive legal background and experience.

## MEMBERSHIP OF INQUIRY

The Committee recommends that the Inquiry be conducted by five members, selected in consultation with First Nations peoples and, as a guideline, the Inquiry have:

- 15.1 A majority of First Nation members;
- 15.2 At least one Aboriginal member and one Torres Strait Islander member;
- 15.3 At least two members who identify as female; and
- 15.4 At least one member with extensive legal experience.



## SECTION THREE—PATH TO TREATY FUND RECOMMENDATIONS

*Photo: Treaty Advancement Committee community briefing, Western Queensland, Charleville.*



## Introduction to the Path to Treaty Fund

The Queensland Government committed to establishing a \$300 million Path to Treaty Fund (the Fund), as part of the Queensland Budget. The government has sought advice from the Committee on options to administer and access the Fund, which will help shape the next steps toward treaty-making for Queensland.

Key features of the Fund include:

- Queensland Government is retaining a total of \$1.8 billion from the transfer of the Titles Registry, holding this amount in a Queensland Future Fund to offset debt and support a number of other long-term government priorities, including the Path to Treaty;
- \$300 million worth of units from the Queensland Titles Registry;
- \$300 million is held in perpetuity in the Queensland Future Fund, with the revenue from this share providing an ongoing, sustainable source of income to support Path to Treaty initiatives;
- expected to generate approximately \$10 million per year; and
- Queensland Government has committed to providing these allocations to support Path to Treaty for the next ten years.

The establishment of the Queensland Future Fund is a very significant commitment by the Queensland Government to the Path to Treaty process. It offers a degree of comfort that any future government wishing to alter the Fund will have to do so under the full glare of public scrutiny.

The Committee agreed this is one of the most important and positive initiatives in Queensland's history and congratulated the Premier, the Treasurer, and Minister for Seniors, Disability Services, and Aboriginal and Torres Strait Islander Partnerships.

Recommendation

## 16. GUARANTEED FUNDING FOR THE PATH TO TREATY

The Committee recommends that:

- 16.1 The minimum annual allocation of \$10 million from the \$300 million Path to Treaty Fund (the Fund) is made available to maintain the Path to Treaty process.

Literature supports the need for ongoing guaranteed sources of funding, particularly given that 'most Indigenous organisations still experience the current funding system as both very complex and very insecure.'<sup>47</sup>

A commitment to making the Fund available until the Path to Treaty process concludes gives Aboriginal and Torres Strait Islander people the confidence to enter into treaty-making, secure in the knowledge of a government-guaranteed source of funding which is not reliant on the vagaries of an annual budget bidding process.

Recommendation

## 17. FUND ALLOCATIONS ONCE THE INSTITUTE IS ESTABLISHED

The Committee recommends that, once established, the Institute receive the entirety of allocations from the Fund to resource:

- 17.1 The administration of its operations; and
- 17.2 The carrying out of its legislated functions.

The Fund is a revenue arrangement that will support the Institute to pursue the Path to Treaty reform objectives, in partnership with First Nations peoples and organisations. Through the Institute, funding will support First Nations organisations and peoples to participate in Path to Treaty and to progress treaty negotiations.

The Committee agreed that funding will be allocated at the discretion of the Institute and that funding from the Fund to the Institute should not be itemised or 'tied', as that would compromise the independence of the Institute. The Committee acknowledges the need for accountability and transparency in its allocation decisions.

For clarity, it should also be noted that allocations from the Fund are not intended to be used to meet any financial commitments arising from the outcomes of individual treaties. If Queensland agrees as part of treaty negotiations to settlements requiring payments, such as reparations, then such financial commitments are entirely separate from the resources available from the Fund.

## Rationale

Literature describes the shortcomings of conventional funding models that often apply to First Nations organisations by Australian, State and Territory governments, in which First Nations organisations are generally seen only as welfare organisations or an arm of government, rather than the providers of services prioritised by the community. They are then thrown into a constant cycle of applying for, and reporting against, grants that have often been provided for very specific purposes.<sup>48</sup>

Ongoing and guaranteed funding to support the Institute to progress the Path to Treaty recognises the Institute—and consequently other First Nations organisations and representative structures that it will work with—as more than providing a public service but central to pursuing Queensland’s treaty reform objectives. Literature argues that the provision of a simpler and more assured ongoing funding model helps to solidify Aboriginal and Torres Strait Islander organisations as part of a re-emerging First Nations order of government.<sup>49</sup>

### Recommendation

## 18. FUND ALLOCATIONS BEFORE THE INSTITUTE IS ESTABLISHED

The Committee recommends that, until the Institute is established, the accrued allocations from the Fund be utilised as follows:

- 18.1 At least \$5 million for the agreed functions of the Institute that could commence immediately, in line with the Committee’s recommendations; and
- 18.2 The remaining funds being made available to contribute to initial costs of the truth telling and healing process.

The Committee has been advised that the \$300m Path to Treaty Fund is expected to generate allocations of approximately \$10m per annum. On the basis that the allocations are available from 1 July 2021, it is anticipated that \$5m will be available by the beginning of 2022, a further \$5m available by 30 June 2022, and a further \$5m by 30 December 2022.

The Committee recommends functions of the Institute which can and should begin as soon as possible include:

- advising and facilitating the development of a treaty-making framework;
- providing support to build the capacity of First Nations to engage in the treaty-making process;

- engaging with the wider Queensland community about Path to Treaty;
- undertaking research and promoting ethics and human rights; and
- local and regional truth telling and healing initiatives.

The Committee proposes that funds be released from the Path to Treaty Fund to allow these activities to commence.

The Truth Telling and Healing Inquiry (the Inquiry) should be funded through separate funding noting that:

- the Victorian Government has allocated \$44 million in the Victorian State Budget 2021–22 for the conduct of the Yoorrook Justice Commission (three-year Commission); and
- the Canadian Truth and Reconciliation Commission (CTRC) was resourced by the Canadian Government and between 2007 and 2015, the government of Canada provided about (CAD) \$72 million to support the CTRC work. The regime of reparations was handled separately under the Indian Residential Schools Settlement Agreement.

The Committee is firmly of the view that the Fund should not resource the ongoing work of the Inquiry. Noting that Inquiries can be expensive and noting, for example, that the Victorian Government has allocated \$44 million for the conduct of the Yoorrook Justice Commission which has a similar mandate to the one recommended for the Queensland truth telling and healing process, it is realistic to expect that similar resources will be required in Queensland.

If this amount were to be taken from the Path to Treaty Fund, it would mean the Path to Treaty process could be put on hold for up to four years, a position the Committee considers untenable.

However, the Committee recognises that it may take up to 18 months to establish the Institute and if this is the case, there will be funds accruing in the Path to Treaty Fund of which some may be available to allocate to the early stages of establishing the Inquiry.

Once the Institute legislation is enacted, the entirety of the Path to Treaty Fund allocations are to be transferred to the Institute. The Committee is cognisant the Path to Treaty Fund is a significant allocation of funding to the treaty process and envisages that Path to Treaty Fund allocations be devoted to the work of the First Nations Treaty Institute.

Remaining costs of the Inquiry should be funded by the government separately, and not be taken from the Fund.

## 19. ADMINISTRATION OF FUNDS

The Committee recommends that:

- 19.1 The legislation establishing the Institute provide for accountability and transparency in its operations and in the use of allocations from the Fund.

### Rationale

The Committee considers that it is critical the Institute be tasked with the administration of allocations from the Path to Treaty Fund. This is underpinned by agreement from the Treaty Working Group, the Eminent Panel and government on the creation of the Institute, and its centrality to treaty-making in Queensland.

The design of the Institute outlined in Recommendations 1–11 will provide comfort to Aboriginal and Torres Strait Islander peoples, Queenslanders and the Queensland Government and Parliament as to the management, administration and accountability of the Institute.

In addition, the Committee is aware that as a statutory body in Queensland, the Institute will be subject to oversight from the Crime and Corruption Commission, the Ombudsman and the Queensland Audit Office.

First Nations organisations have, in the past, been heavily scrutinised. For example, the Aboriginal and Torres Strait Islander Commission (ATSIC) was repeatedly doubted by Parliament as being able to handle public money responsibly. In the debate of the *Aboriginal and Torres Strait Islander Commission Act 1989*, the shadow minister for Aboriginal affairs (Warwick Smith) criticised ATSIC as being excessively centralised due to its connection between representative and administrative functions, and that:

*This integration of representative and administrative functions—will leave the commissioners—torn between doing the best for their constituents and administering hundreds of millions of dollars for grants with bureaucratic impartiality. That is a fundamental conflict, a conflict in which lie the seeds of ATSIC's destruction.*<sup>50</sup>

The Committee has considered this carefully and has recommended the Institute Council be able to delegate powers to the CEO, to separate the representative function of Council members from the administrative function of the CEO. The CEO will work closely with the Audit, Finance and Risk Management Advisory Committee, and other Advisory Committees as needed, to provide expertise and support to inform decisions around the appropriate allocation of funds. In addition the Council Secretary position provides advice and support on good governance in accordance with statutory requirements.

## 20. TRANSFER OF FUNDS

The Committee recommends that:

- 20.1 The transfer of allocations from the Fund to the Institute be made available in four-year funding blocks.

Supported by the transparency and accountability mechanisms mentioned, the Committee recommends that the allocations from the Path to Treaty Fund be made available to the Institute in four-year funding blocks.

The Strategic Planning process is considered the ideal vehicle to facilitate this because:

- Strategic Planning will be a legislated function of the Institute;
- each Plan will cover a four-year period; and
- the Plan at a minimum will include:
  - goals and actions to implement the Institute's strategic direction;
  - the proposed management of the Fund;
  - expected outcomes or performance indicators; and
  - intended accountability measures.

The Committee intends that the Strategic Plan be tabled in Parliament, ensuring the Queensland public is aware of the intended outcomes of the Institute for each four-year period. An Annual Report will also be provided to Parliament outlining, at a minimum, achievements against those indicators in the Strategic Plan.

It is proposed that once the Institute has finalised its Strategic Plan, it will be presented to the appropriate Minister for tabling in Parliament. The tabling will be the trigger for the transfer of funds to the Institute.

This will provide the Institute with the flexibility to forward plan its work and manage its budget across this four-year period, rather than annually, to navigate the peaks and troughs of activity as the treaty-making process evolves and matures. The Institute should also be able to seek further budget allocations where required, through usual budget processes.

If a four-year cash allocation cannot be provided, at the very least an annual cash allocation should be made to avoid the 'drip feeding' of funds on a quarterly basis.

## Rationale

Path to Treaty funding needs will vary as the process matures. The funding provided to the British Columbia Treaty Commission, which is reliant on federal and provincial government funding, is indicative of this. For example, in 1995 following British Columbia Treaty Commission (BCTC) establishment, \$18 million was required.<sup>51</sup>

In 2019–2020, funding was approximately \$3.05 million for operations of the BCTC and \$31.2 million allocated to First Nations for their negotiations.<sup>52</sup>

An advantage of four-year block funding is a smoothing of the impact of any shortfall or surplus and allows the Institute to structure its budgets in a way that yearly expenditure might vary from one year to the next.

It should be noted that the annual allocation available from the Path to Treaty Fund of approximately \$10 million is linked to the value of the Fund and is not based on modelling of the actual requirements of the treaty process. Accordingly, while the allocation may be sufficient it is possible that during particular periods of the treaty process the resourcing needs could exceed the amount available from the Fund. In this case additional funding should be sought through the usual budget processes.





## **SECTION FOUR**—PATH TO TREATY OFFICE RECOMMENDATION

*Photo: Treaty Advancement Committee community briefing, Mount Isa.*

## 21. PATH TO TREATY OFFICE

The Committee recommends that a Path to Treaty Office, overseen by the Premier, be established to:

- 21.1 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; and
- 21.2 prepare the Queensland Government to be treaty-ready.

The process of treaty negotiations requires both parties, and the wider community, to be treaty-ready. While much focus is on the requirement to equip First Nations to engage constructively in the treaty process, there is an equal obligation on government, and the wider community, to also be treaty-ready. This will involve a whole-of-government approach and this in turn would benefit from the creation of a Path to Treaty Office or similar structure within government.

Oversight by the Premier will strengthen the whole-of-government approach to treaty and will provide a level of confidence to the Aboriginal and Torres Strait Islander community of the government's commitment. This confidence would be enhanced if there is a position to support this oversight function, such as a Chief Treaty Advisor, within the Premier's Office to be a direct link between the Path to Treaty Office and the Premier.

It is envisioned that the Path to Treaty Office will also lead a public engagement and awareness campaign, in conjunction with establishment of the Institute so that the wider community is engaged in the process and understand the benefits of treaty for all Queenslanders.

An example of a community engagement campaign supporting a treaty process is the Victorian Government's Deadly and Proud platform. This initiative showcases and shares stories and engenders pride in the history and rich culture of Aboriginal Victoria and supports their treaty process. Stories include the ingenuity of ancient civilisations and the incredible resilience and stories of thriving Aboriginal communities.<sup>53</sup>

As the Path to Treaty process matures, there will be activities that the Queensland Government will need to undertake to ensure it is ready for treaty negotiations. The Path to Treaty Office will support this process, including by:

- ensuring the Queensland Government is represented in treaty negotiations, as overseen by the Premier;
- monitoring and ensuring the Queensland Government meets Path to Treaty commitments;
- developing mechanisms and policy that support appropriate:
  - Queensland Government engagement between and with agencies; and
  - Queensland Government engagement with First Nations peoples.
- strengthening and supporting Queensland Government cultural intelligence and capability, including through workforce training; and
- ensuring the Queensland Government is embodying and complies with the key principles and processes as guided by the treaty-making framework.

### Rationale

The treaty process is complex and will require the Queensland Government to provide resources to adequately reframe its policies and practices in recognition of the new relationships set down through the Path to Treaty process. This includes garnering support amongst the wider community as well as the ability, internally, to progress the Path to Treaty. This could include, for example, legislative amendments.

Other jurisdictions have established similar entities to ensure the necessary supporting systems and governance is there to progress treaty negotiations equitably and respectfully, for example, New Zealand's Te Arawhiti (Office of Maori Crown Relations), whose activities include signing terms for negotiations, settlement and agreements and introducing and enacting legislation to implement and legally recognise treaty settlements.<sup>54</sup>



## **SECTION FIVE**—INDEPENDENT INTERIM BODY RECOMMENDATION

*Photo: Treaty Advancement Committee invite to community briefing, Atherton Tablelands.*

## INDEPENDENT INTERIM BODY

The Committee recommends that an Independent Interim Body or equivalent mechanism be established to continue the momentum of the Path to Treaty by:

- 22.1 Providing a co-design partnership with the Queensland Government to inform the legislative phase of the Path to Treaty;
- 22.2 Guiding the truth telling and healing process inclusive of the establishment, of the Inquiry and developing the Terms of Reference; and
- 22.3 Facilitating research and community engagement functions that will provide a solid grounding for the Institute's commencement.

The implementation of the Committee's recommendations requires legislation. A Path to Treaty Act as proposed by the Eminent Panel would essentially create the First Nations Treaty Institute (the Institute) and secondly provide the legal underpinning required to constitute and empower the formal Truth Telling and Healing Inquiry (the Inquiry). To operate consistently with the goal of a reframed relationship between the state and First Nations, this legislative process needs to be informed by the input of First Nations peoples.

Realistically, the First Nations Treaty Institute will not be operational at best before the last quarter of 2022. Prior to the Institute there needs to be in place an independent mechanism to facilitate First Nations involvement in the legislative process and to maintain the momentum of the Path to Treaty more generally.

The Committee envisages that the Independent Interim Body would be tasked with:

- assisting in the co-design of the legislation establishing the Institute and constituting the Inquiry;
- facilitating local truth telling and engagement with public institutions as the first stage of the *Leading Our Way Queensland Aboriginal and Torres Strait Islander Healing Strategy 2020–2030*;<sup>55</sup> and
- preparing for the commencement of the Institute, including community engagement, scoping and liaison functions to enable the Institute to begin as a statutory body.

Allocations from the Path to Treaty Fund will enable the Independent Interim Body to be resourced. Given the Body has a defined life and specific mandate to assist in the building of the institutional arrangements for the Path to Treaty prior to the establishment of the Institute, the Interim Body will by necessity be appointed by the government akin to the Treaty Advancement Committee.

### Rationale

The Committee has noted several times the 'time lag' between the reports from the Eminent Panel and Path to Treaty Working Group being provided to government, in February 2020, to when the government provided its response in August 2020 to the appointment of this Treaty Advancement Committee in February 2021.

The Committee acknowledges the significant effect the COVID-19 pandemic had and continues to have across Australia and its impact on the Path to Treaty was also understood when the Eminent Panel submitted its Supplementary Advice and Recommendations to government in May 2020. Even with Queensland avoiding the long lockdowns seen in other jurisdictions, the Committee has had to manage the cancellation and deferment of several events intended to inform and seek the views of communities due to the pandemic.

Maintaining momentum of the Path to Treaty in this challenging period is important as is the facilitation of a partnership model of First Nations and the government to build the institutional arrangements and commence the truth telling and healing process. The government must work at implementing the Path to Treaty elements as a priority, but with First Nations input. The Independent Interim Body will help provide co-design support to the Queensland Government, including:

- advice to the Parliamentary Counsel on the drafting of legislation as particular matters arise or need interpretation;
- the commencement of local truth telling;
- advice on the Terms of Reference for the Inquiry;
- communication and engagement with First Nations peoples; and
- administrative arrangements for the commencement of the Institute.





**APPENDIX I**—EMINENT PANEL RECOMMENDATIONS AND  
THE QUEENSLAND GOVERNMENT RESPONSE

# 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
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## 1. Path to Treaty Overview

Recommendations:

- 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 and;
  - 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.

### 1.1, 1.2: Accepted

The Queensland Government is committed to embarking on a Path to Treaty with First Nations peoples consistent with the rights as embodied in the *Human Rights Act 2019 (Qld)* and the principles articulated in the United Nations Declaration on the Rights of Indigenous Peoples.

### 1.3: Accepted in-principle

The Queensland Government will make a Treaty Statement of Commitment that commits to proceeding on the Path to Treaty.

### 1.3.1 – 1.3.5: Accepted in-principle

The COVID-19 global pandemic has impacted the ability to establish the First Nations Treaty Institute and support its functions.

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.

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.

### 1.3.6: Accepted in-principle

The Government will consider introducing legislation following advice from the Committee.

## 2. The First Nations Treaty Institute

Recommendations:

- 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 and;
  - 2.2.6 engagement with the Queensland community on the Path to Treaty.

### 2.1 – 2.4: Accepted in-principle

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.

The Government will consider options to establish the First Nations Treaty Institute in 2021 informed by the work of the Committee.

## 2. The First Nations Treaty Institute (continued)

- 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 and;
  - 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 and;
  - 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.

### 2.5: Accepted in-principle

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.

### 2.6: Accepted in-principle

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.

## 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.

## 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.



## 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.

## 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.



**APPENDIX II**—TREATY ADVANCEMENT COMMITTEE TERMS OF REFERENCE

## Purpose

The Treaty Advancement Committee will:

- build broad community support for the Path to Treaty;
- provide advice to the Queensland Government on options to implement the Eminent Panel advice and recommendations on the Path to Treaty; and
- provide feedback to Queensland communities on the results of Path to Treaty consultations, the Treaty Working Group report, Eminent Panel advice and Queensland Government response.

## Objectives and Scope

The objectives and scope of the Treaty Advancement Committee are to:

- provide advice and guidance to the Queensland Government on proposed implementation of the recommendations from the Eminent Panel, particularly in relation to:
  - the establishment of the First Nations Treaty Institute and its role including developing a treaty negotiation framework, capacity-building and treaty readiness;
  - the establishment of the First Nations Treaty Future Fund;
  - proposed legislation;
  - the truth telling and healing processes; and
  - preliminary advice on future representative structures and mechanisms.
- provide feedback to the Queensland community on the Treaty Working Group report and Queensland Government response.
- provide guidance on what material or expertise will support the development of engagement and awareness campaigns around treaty.
- initiate informed discussions among Aboriginal and Torres Strait Islander peoples, communities and their representatives, other relevant experts, leaders and academics, all Queenslanders, and government agencies to:
  - deepen the understanding and engagement of the wider Queensland community in the Path to Treaty;
  - talk about what the next steps on the Path to Treaty means for all Queenslanders;
  - build a shared, respectful understanding about Treaty; and
  - build broader community support for the Path to Treaty through acting as ambassadors for the Path to Treaty.

## Reporting

The Treaty Advancement Committee will provide a report to the Queensland Government within six months of the date of the letter of appointment. The Treaty Advancement Committee report will detail:

- the community engagement undertaken by the Committee and the outcomes of that engagement;
- advice on options to implement the Eminent Panel advice and recommendations on the Path to Treaty; and
- proposals in relation to next steps.

## Code of Conduct

Members will be required to undertake the work of the Treaty Advancement Committee in accordance with the ethics values set out in section 6 (integrity and impartiality) and section 8 (accountability and transparency) of the *Public Sector Ethics Act 1994 (Qld)*.

## Confidentiality

Members will be required to sign a confidentiality agreement.

## Membership

The Treaty Advancement Committee will consist of up to eight Aboriginal people, Torres Strait Islander people and non-Indigenous people appointed by the Minister for Aboriginal and Torres Strait Islander Partnerships.

Committee members will have expertise in:

- the initiation and facilitation of informed discussions about complex issues among Aboriginal and Torres Strait Islander people, communities and their representatives, and non-Indigenous people, at a local level, state level and/or national level;
- leadership and extensive knowledge and experience of areas such as what treaty might mean for Aboriginal and Torres Strait Islander people, reconciliation, agreement-making, enhancing First Nations participation and self-determination; and
- Queensland Government, First Nations and corporate governance structures and processes.

Committee members will be required to undergo suitability checks that include a criminal history check and identification of any potential conflicts of interest.

## Appointment and Remuneration

The Treaty Advancement Committee will be:

- appointed to 12 August 2021 (six months from the date of the letter of appointment); and
- remunerated through sitting fees under the Remuneration Procedures for Part-Time Chairs and Members of Queensland Government Bodies.

## Meetings and Support

- travel, including to regional and remote areas, may be required.
- no delegates or proxies for members will be accepted and members have no financial delegation.
- the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships will provide logistical and administrative support.





**APPENDIX III**—COMPARISON OF THE RECOMMENDATIONS PROVIDED  
BY THE EMINENT PANEL AND THE COMMITTEE

## Summary

The Committee fully supports the Eminent Panel's **Recommendation 1** to implement the Path to Treaty through the creation, by legislation, of institutional arrangements. The Committee agrees that these arrangements, particularly the First Nations Treaty Institute (the Institute), will need to be independent from government.

**Recommendation 2** proposed that the Institute have the responsibility to take the Path to Treaty process forward, including the priority to lead a formal truth telling and healing process (outlined further in **Recommendation 3**). The Committee agrees that the Institute should be responsible for the groundwork needed to support treaty-making however argues that the formal truth telling and healing process should be led by a Truth Telling and Healing Inquiry rather than the Institute.

In light of the National Indigenous Voice process underway, where possible the Committee has aligned the Path to Treaty process with the Voice reform, including proposed membership linkages between any future Voice structures and the Institute's Council.

The Eminent Panel, under **Recommendation 4**, proposed to build First Nations capacity to become treaty-ready. The Committee considers that this is an important function of the Institute. The Committee also agrees with **Recommendation 5** that increased understanding and education in the wider community about the history of First Nations peoples and the Path to Treaty should be facilitated by the Queensland Government, specifically by a proposed Path to Treaty Office. This will help to continue momentum and ensure broader community support in conjunction with the establishment of the Institute.

**Recommendation 6** relates to the Path to Treaty legislation that will create the Institute. The Committee agrees that this legislation adopt a rights-based model consistent with the United Nations Declaration on the Rights of Indigenous Peoples.

The Eminent Panel proposed that a First Nations Treaty Future Fund be established in which annual budget contributions will be made to build the Fund to a level to support and resource the Path to Treaty (**Recommendation 7**). Since this recommendation was made, the Queensland Government has created a \$300 million Path to Treaty Fund. The Committee has provided advice on how the Fund should operate to support the Path to Treaty.

**Recommendation 8** related to transparency and publication of the Eminent Panel's advice and the Treaty Working Group's Report. While not relevant for this phase, the Committee acknowledges the importance of maintaining transparency throughout the Path to Treaty process. The following table provides a detailed comparison between the Eminent Panel and Treaty Advancement Committee Recommendations.

EMINENT PANEL RECOMMENDATION AND QUEENSLAND GOVERNMENT RESPONSE

1.2 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 (the Institute).

**Accepted in-principle**

The Queensland Government will consider options to establish the First Nations Treaty Institute in 2021 informed by the work of the Committee.

6.2 The proposed legislation will include acknowledgement as per 6.2.1 – 6.2.7.

**Accepted in-principle**

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

**6. Implementation – The Path to Treaty Act**

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:

6.3.5 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);

TREATY ADVANCEMENT COMMITTEE RECOMMENDATIONS

**Recommendation 1: Establishment of the First Nations Treaty Institute (the Institute)**

The Committee recommends that:

- 1.1 The Institute be created to take carriage of the actions required to progress the Path to Treaty;
- 1.2 The Institute be a statutory entity established by an Act of the Queensland Parliament;
- 1.3 A Bill to establish the Institute be introduced to Parliament by 30 June 2022; and
- 1.4 The Bill state that the Institute should not undertake, or be a party to, the negotiation of treaties.

**Recommendation 2: Acknowledgement**

The Committee recommends that the proposed legislation will include acknowledgement that:

- 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;
- 2.2 Colonisation occurred without the consent of First Nations and often against the active resistance of First Nations peoples;
- 2.3 First Nations have never ceded and continue to assert sovereignty;
- 2.4 Colonisation occasioned devastating disruption to First Nations societies and the dispossession of First Nation Peoples of their lands, seas, waters and air;
- 2.5 First Nations have continuing responsibility for their lands, seas, waters and air in accordance with traditional laws and customs;
- 2.6 First Nations cultures and knowledge is an enormous resource for Queensland; and
- 2.7 Queensland seeks to embark on a Path to Treaty in partnership, good faith and consistently, with the recognition of the rights of First Nations peoples as embodied in *Human Rights Act 2019 (Qld)* and the *United Nations Declaration on the Rights of Indigenous Peoples*.

**Recommendation 3: Guiding Principles**

3. The Committee recommends that the legislation and establishment of the Institute be guided by the following principles:

- 3.1 Self-determination;
- 3.2 Participation in decision-making underpinned by free, prior and informed consent and good faith;
- 3.3 Respect for and protection of culture; and
- 3.4 Equality and non-discrimination.

**2. The First Nations Treaty 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 and;
  - 2.2.6 engagement with the Queensland community on the Path to Treaty.

**Accepted in-principle**

The government will consider options to establish the First Nations Treaty Institute in 2021 informed by the work of the Committee.

**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.

**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.

**Recommendation 4: Institute Functions**

The Committee recommends that, as a minimum, the functions of the Institute include:

- 4.1 Co-developing a Treaty-Making Framework;
- 4.2 Building the capacity of First Nations people to engage in the treaty-making process;
- 4.3 Engaging with representative structures for First Nations peoples;
- 4.4 Facilitating treaty-making, dispute resolution and advising on a future Treaty Tribunal;
- 4.5 Undertaking and providing culturally and ethically informed research;
- 4.6 Engaging with the wider Queensland community about Path to Treaty;
- 4.7 Leading actions and recommendations that emerge from the Truth Telling and Healing Inquiry process (as referred to below);
- 4.8 Facilitating truth telling and healing, knowledge transfer and collection;
- 4.9 Administering allocations from the Path to Treaty Fund; and
- 4.10 Other functions conferred on it by the Minister, in agreement with the Institute.



**Implementation – The Path to Treaty Act**

6.3. The proposed legislation will:

- 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;

**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.

Queensland 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 4 continued

N/A – new recommendation not covered by Eminent Panel recommendations

**Recommendation 5: Institute Powers**

The Committee recommends that the powers of the Institute include, at a minimum:

- 5.1 Powers to administer allocations from the Path to Treaty Fund;
- 5.2 Powers to create and develop intellectual property and build the data sovereignty of Aboriginal and Torres Strait Islander peoples; and
- 5.3 Powers to do all things necessary to carry out its functions.

## EMINENT PANEL RECOMMENDATION AND QUEENSLAND GOVERNMENT RESPONSE

- 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 and;
  - 2.3.3 a Chief Executive Officer appointed by the Institute Council

### Accepted in-principle

The Government will consider options to establish the First Nations Treaty Institute in 2021 informed by the work of the Committee.

## TREATY ADVANCEMENT COMMITTEE RECOMMENDATIONS

### Recommendation 6: Inaugural Institute Council

The Committee recommends that an Inaugural Institute Council be established to oversee the operations of the Institute immediately upon the Institute legislation being enacted and that it:

- 6.1 Is appointed by the Governor-in-Council for a period of no more than two years;
- 6.2 Be comprised of eight members, and two Co-Chairs, all of whom will be Aboriginal and/or Torres Strait Islander persons,
- 6.3 Reflect the diversity of Queensland's First Nations peoples across the state;
- 6.4 Is gender balanced; and
- 6.5 Be Co-Chaired by a woman and man who will be selected by members of the Inaugural Council.

### Recommendation 7: Institute Council

The Committee recommends that:

- 7.1 Members of the First Nations Treaty Institute Council (the Institute Council) be Aboriginal and/or Torres Strait Islander persons directly appointed by First Nations representative mechanisms and structures.

### Recommendation 8: Institute staff

The Committee recommends that:

- 8.1 Positions of Chief Executive Officer and Council Secretary of the Institute be established;
- 8.2 Chief Executive Officer and Council Secretary be appointed by the Institute Council;
- 8.3 First Chief Executive Officer and first Council Secretary should be appointed by the Inaugural Institute Council;
- 8.4 Position of the Chief Executive Officer be classed as a 'special measure' position in that it must be filled by an Aboriginal and/or Torres Strait Islander person;
- 8.5 Term of appointment be:
  - 8.5.1 for the first CEO – not more than two years; and
  - 8.5.2 for any subsequent CEO – not more than three years.

N/A – new recommendation not covered by Eminent Panel recommendations

### Recommendation 9: Advisory Committees

The Committee recommends that:

- 9.1 The Institute Council may establish Advisory Committees;
- 9.2 The legislation establishing the First Nations Treaty Institute mandate the two following permanent Advisory Committees:
  - 9.2.1 Audit, Finance and Risk Management Advisory Committee; and
  - 9.2.2 a Research and Ethics Advisory Committee;
- 9.3 Any Advisory Committee must be chaired by an Institute Council member; and
- 9.4 The Institute Council cannot delegate any of its powers and/or functions to any Advisory Committee it establishes.

## EMINENT PANEL RECOMMENDATION AND QUEENSLAND GOVERNMENT RESPONSE

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

### **Accepted in-principle**

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.

### **Also relevant:**

6. Implementation – The Path to Treaty Act

6.3.9 reporting and other necessary legislative requirements.

### **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.

N/A – new recommendation not covered by Eminent Panel recommendations

## TREATY ADVANCEMENT COMMITTEE RECOMMENDATIONS

### **Recommendation 10: Reporting**

The Committee recommends that:

- 10.1 The Institute provides an Annual Report to the Queensland Parliament; and
- 10.2 The Institute develop and publish a Strategic Plan every four years.

### **Recommendation 11: Review of Legislation**

The Committee recommends that:

11. The Act establishing the Institute be reviewed in the fifth year of the Institute's operation.

EMINENT PANEL RECOMMENDATION AND QUEENSLAND GOVERNMENT RESPONSE

- 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 telling 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 will be retained as source material for State museums and libraries.

**3.4.2: Accepted in-principle**

It is anticipated that the Queensland Government will 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) will 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.

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

TREATY ADVANCEMENT COMMITTEE RECOMMENDATIONS

**Recommendation 12: Staged Truth Telling and Healing**

The Committee recommends that a staged approach be adopted for a Truth Telling and Healing Process consisting:

- 12.1 A First Nations lead engagement with public institutions to build understanding in the Queensland community of the reasons and importance of the Path to Treaty: and
- 12.2 A formal Inquiry process through a legislated model created to conduct truth telling and healing.

**Recommendation 13: Inquiry Objectives**

The Committee recommends that the Truth Telling and Healing Inquiry (the Inquiry) should, at a minimum:

- 13.1 Engage with communities to inquire into and chronicle the history of colonisation and the impacts on First Nations peoples and all Queenslanders;
- 13.2 ‘Do no harm’ in the conduct of the Commission by adopting the principles of free, prior and informed consent and a trauma-informed approach;
- 13.3. Promote public awareness and develop shared understandings about Aboriginal cultures, histories, languages and traditions; and
- 13.4 Link with the treaty-making process and provide recommendations to inform treaty-making.

**Recommendation 14: Term of the Inquiry**

The Committee recommends that:

- 14.1 The Inquiry report have a three year term

**Recommendation 15: Membership of the Inquiry**

The Committee recommends that the Inquiry be conducted by five members and consist of at least:

- 15.1 A majority of First Nation members;
- 15.2 At least one Aboriginal member and one Torres Strait Islander member;
- 15.3 At least two members that identify as female; and
- 15.4 At least one member with extensive legal experience.



EMINENT PANEL RECOMMENDATION AND QUEENSLAND GOVERNMENT RESPONSE

TREATY ADVANCEMENT COMMITTEE 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 Telling 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.

**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.

Refer above

**Recommendation 16: Guaranteed funding for the Path to Treaty**

The Committee recommends that:

- 16.1 The minimum annual allocation of \$10 million from the \$300 million Path to Treaty Fund is made available to maintain the Path to Treaty process.

**Recommendation 17: Fund allocations once the Institute is established**

The Committee recommends that, once established, the Institute receive the entirety of allocations from the Fund to resource:

- 17.1 The administration of its operations; and
- 17.2 The carrying out of its legislated functions.

Refer above

**Recommendation 18: Fund allocations before the Institute is established**

The Committee recommends that, until the Institute is established, the accrued allocations from the Fund be utilised as follows:

- 18.1 At least \$5 million for the agreed functions of the Institute that could commence immediately, in line with the Committee's recommendations; and
- 18.2 The remaining funds being made available to contribute to initial costs of establishing the Inquiry.

Refer above

**Recommendation 19: Administration of funds**

The Committee recommends that:

- 19.1 The legislation establishing the First Nations Treaty Institute provide for accountability and transparency in its operations and in the use of allocations from the Path to Treaty Fund.

Refer above

**Recommendation 20: Transfer of Funds**

The Committee recommends that the:

- 20. Transfer of allocations from the Fund to the Institute be made available in four-year funding blocks.

## EMINENT PANEL RECOMMENDATION AND QUEENSLAND GOVERNMENT RESPONSE

- 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.

### 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.

### Argued as part of:

#### 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 Telling and Healing Process, a community engagement program to promote understanding of the history of First Nations peoples and the Path to Treaty process.

### 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.

N/A – new recommendation not covered by Eminent Panel recommendations

## TREATY ADVANCEMENT COMMITTEE RECOMMENDATIONS

### Recommendation 21: Path to Treaty Office

The Committee recommends that a Path to Treaty Office, overseen by the Premier, be established to:

- 21.1 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; and
- 21.2 Build capacity of the Queensland Government to prepare and be treaty-ready.

### Recommendation 22: Independent Interim Body

The Committee recommends that an Independent Interim Body or equivalent mechanism be established to continue the momentum of the Path to Treaty by:

- 22.1 Providing a co-design partnership with the Queensland Government to inform the legislative phase of the Path to Treaty;
- 22.2 Guiding the truth telling and healing process inclusive of the establishment of the Inquiry and developing the Terms of Reference; and
- 22.3 Facilitating research and community engagement functions that will provide a solid grounding for the Institute's commencement.

## Endnotes

- 1 *Queensland Stolen Wages Reparations Taskforce Report Reconciling Past Injustice (March 2016)*, Queensland Government. Available online at: *Stolen Wages Taskforce Recommendations Report: Reconciling Past Injustice (www.qld.gov.au)* [last accessed October 2021]
- 2 Lightfoot, S, 'Indigenous-Canadian Relations at the Sesquicentennial: An Opportunity for Real and Lasting Transformation, in Hughes Tuohy et al (eds) *Policy Transformation in Canada, Is the Past Prologue*' University of Toronto Press, 2019, pg130
- 3 *The British Columbia Treaty Commission undertook a comprehensive review of the BC Treaty Process in 2001 'Looking Back Looking Forward' after 10 years of operation and highlights the key challenges and learnings. For more information see online at 21611 Review (bctreaty.ca)* [last accessed July 2021]
- 4 *British Columbia Treaty Commission, 2007, 'What's the deal with treaties?', pg. 11, available online at: Whats-the-Deal-v5.pdf (bctreaty.ca)* [last accessed July 2021]
- 5 Brennan, S, Behrendt L, Strelein L and Williams, G, *Treaty, The Federation Press Sydney, 2005, pg. 94*
- 6 Gooda, M 'Strengthening our relationships over lands, territories and resources: the United Nations Declaration on the Rights of Indigenous Peoples', 2011, Presentation at James Cook University, available online at: *Strengthening our relationships over lands, territories and resources: the United Nations Declaration on the Rights of Indigenous Peoples (jcu.edu.au)* [last accessed July 2021]
- 7 *United Nations Declaration on the Rights of Indigenous Peoples, 2007, pg. 5 United Nations Declaration on the Rights of Indigenous Peoples | United Nations For Indigenous Peoples* [last accessed July 2021]
- 8 *This is based on the reasoning that 'full and final' settlements could deliver injustices to future generations by preventing updated understanding and evidence to allow First Nations to pursue further rights. For more information see Northern Territory Treaty Commission, 2020, Treaty Discussion Paper, Northern Territory Treaty Discussion paper (apo.org.au) pg. 52, [last accessed July 2021]*
- 9 *This is provided treaties are substantial enough for First Nations empowerment and self-determination, see for example, Michael Mansell, Treaty and Statehood: Aboriginal Self-Determination, Federation Press, 2016*
- 10 *As above, note 7, pg. 6*
- 11 *For more information see Crown-Indigenous Relations and Northern Affairs Canada Self-government (rcaanc-cirnac.gc.ca)* [last accessed July 2021]. See also *Canada's review on the implementation of Modern treaties and self-government agreements Provisional annual report: July 2015-2018 Implementation of modern treaties and self-government agreements (rcaanc-cirnac.gc.ca)* Government of Canada [last accessed July 2021]
- 12 *Williams, G, and Hobbs, H. Treaty, 2nd Edition, 2020, Federation Press Sydney, pg 99*
- 13 *As above note 5, p.3.*
- 14 *Seven First Nations are implementing modern treaties that were negotiated in the made-in-BC treaty negotiations process: the five Maa-nulth First Nations, Tla'amin Nation, and Tsawwassen First Nation. The Nisga'a treaty was concluded as the British Columbia treaty negotiations process was unfolding. There are eight constitutionally entrenched modern treaties in British Columbia when the Nisga'a treaty is included. For more information see <https://www.bctreaty.ca/faq> [last accessed July 2021]*
- 15 *Victoria Government, Traditional Owner Nation-Building Support Package, First Peoples- State Relations Website at Traditional Owner Nation-building Support Package | First Peoples - State Relations (firstpeoplesrelations.vic.gov.au)* [last accessed October 2021]
- 16 *The Harvard Project on American Indian Economic Development, Ash Center for Democratic Governance and Innovation at the John F. Kennedy School of Government, Harvard University, Website at: About the Harvard Project | The Harvard Project on American Indian Economic Development (hpaied.org)* [last accessed October 2021]
- 17 *Uluru Statement from the Heart in 2017 called for Voice, Treaty and Truth. For more information see online at: Uluru Statement from the Heart* [last accessed September 2021]
- 18 *The Queensland Government submitted its response in May 2021 to the Commonwealth Voice Indigenous Voice Co-design Process Interim Report with commitment to conduct further co-design to finalise Queensland's Voice arrangements, including exploring the potential of a state-wide representative body. Available online at: Queensland Government response- Indigenous Voice Co-design process Interim Report [accessed online September 2021]*
- 19 *ABC News, 'Indigenous constitutional recognition to be put to referendum in next three years, Minister promises, 10 July 2019, available online at: Indigenous constitutional recognition to be put to referendum in next three years, Minister promises - ABC News* [last accessed October 2021]
- 20 *Government of Canada, Crown Indigenous Relations and Northern Affairs Canada Statement on the commemoration of Treaty No. 11, August 2021, available online at: <https://www.canada.ca/en/crown-indigenous-relations-northern-affairs/news/2021/08/statement-on-the-100th-commemoration-of-treaty-no-11.html> [last accessed August 2021]*

- 21 *The use of mediation or negotiation techniques have been found to help re-direct conflict joint inquiry, explore options rather than escalate demands in negotiations in land management and planning policy areas, which commonly cater for conflicting interests. See, for more information: Forester, John. "Making participation work when interests conflict: Moving from facilitating dialogue and moderating debate to mediating negotiations." Journal of the American Planning Association 72.4 (2006): 447-456.*
- 22 As above, note 5, pg.144
- 23 *The Treaty Working Group's Report on Queensland's Path to Treaty, 2020, pg.60 , available online at: Treaty Working Group report February 2020 (dsdsatsip.qld.gov.au) [last accessed July 2021]*
- 24 *Tuhwai Smith, L, 2006, 'Decolonising Methodologies: Research and Indigenous People' University of Otago Press, Dunedin, pg. 16. Tuhwai Smith also points to the need for integral Indigenous research which addresses critical questions, such as whose research is it? Who owns it? Whose interests does it serve? Who will benefit from it? Who has designed its questions and framed its scope? Who will carry it out? Who will write it up? How will its results be disseminated? (pg. 10)*
- 25 As above note 24, pg.16.
- 26 *Buxton, J, Truth and Reconciliation, 2018, Winston Churchill Memorial Trust of Australia.*
- 27 *Queensland Government, at time of Report Handover not publicly available*
- 28 *Reconciliation Australia, Truth-Telling and Reconciliation 2020, available online at: Truth-telling and reconciliation, 2020, available online at: Truth-telling and reconciliation | Reconciliation Australia [last accessed July 2021]*
- 29 *For more information about the Queensland Government 2021-2022 budget announcements see Queensland Government Budget Highlights online at: Highlights - Queensland Budget 2021-22 [last accessed July 2021]*
- 30 *New South Wales Aboriginal Land Council's submission on the Protection of Indigenous Knowledge in the Intellectual Property System, 2019, available online at: nsw\_aboriginal\_land\_council.pdf (ipaustalia.gov.au) [last accessed July 2021]*
- 31 *The Commonwealth Government released the Indigenous Voice Co-design Process Interim Report in October 2020 <https://voice.niaa.gov.au/sites/default/files/2021-02/indigenous-voice-codesign-process-interim-report-2020.pdf>. The Queensland Government submitted its response to the Commonwealth Voice Indigenous Voice Co-design Process Interim Report with commitment to conduct further co-design to finalise Queensland's Voice arrangements, including exploring the potential of a state-wide representative body. Available online at: Queensland Government response- Indigenous Voice Co-design process Interim Report [accessed online September 2021]*
- 32 As above, note 4 pg. 23
- 33 As above, note 23, pg 46, 47, 50
- 34 *International Center for Transitional Justice Website, Global Transitional Justice, 2009, available online at: <https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf> [last accessed July 2021]*
- 35 *Northern Territory Treaty Commission, 'Towards truth-telling' Discussion paper, online at: Publication - Towards Truth Telling | Northern Territory Treaty Commission (treatynt.com.au), pg 11 [last accessed July 2021]*
- 36 *Omar D, in 1995, speaking on the Promotion of National Unity and Reconciliation Act, No 34 which the South African Truth and Reconciliation Commission was based on. Information about the Act is available online at: <http://juta/nxt/print.asp?NXTScript=nxt/gateway.dll&NXTHost=jut> (justice.gov.za) [last accessed September 2021]*
- 37 *A formal Inquiry is being recommended in Victoria through the Yoorrook and Justice Commission, and the Northern Territory is considering establishing a Truth Telling Commission, Towards Truth Telling, 2020, Discussion Paper- Publication - Towards Truth Telling | Northern Territory Treaty Commission (treatynt.com.au) [last accessed July 2021]*
- 38 *Victoria and Northern Territory are progressing their treaty processes in parallel with truth telling. In Victoria, the Yoorrook Justice Commission was established on 14 May 2021 under the Victorian Inquiries Act 2014 to conduct the truth telling process in Victoria, more information including letters patent available here: Truth and Justice in Victoria | Aboriginal Victoria [last accessed June 2021]*
- 39 *The taskforce put forward a range of interim recommendations to government in relation to stolen wages legacy issues on December 2015, given that the reparations process should provide closure for Aboriginal and Torres Strait Islander people. These were reframed in the Final Report as Future Acts of Reconciliation, as above in note 1*
- 40 As above, note 7, pg. 3
- 41 *The Guardian 'The children's graves at residential schools in Canada evoke the massacres of Indigenous Australians The children's graves at residential schools in Canada evoke the massacres of Indigenous Australians | William Pengarte Tilmouth | The Guardian (29 June, 2021) [last accessed at October 2021]*
- 42 As above, note 26 pg 14
- 43 *National Agreement Closing the Gap Website, 2021, Australian Government, available online at: <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/6-priority-reform-areas/three> [last accessed September 2021]*
- 44 *Buranga Agreement, Northern Territory Government the Northern Territory Land Councils, June 2018., available online at: Barunga Agreement - NT.GOV.AUv [last accessed June 2021]*

- 45 See for example, Czyzewski, Karina. "The Truth and Reconciliation Commission of Canada: Insights into the goal of transformative education. *International Indigenous Policy Journal* 2.3 (2011)
- 46 National Research Centre, *Final Report of the Truth and Reconciliation Commission Report, 2015, The TRC Report Online | The Executive Summary of the findings of Canada's Truth and Reconciliation Commission, online in an easily readable format.* (nevillepark.github.io) [last accessed June 2021]
- 47 Sanders, W 'Towards an Indigenous order of Australian government: Rethinking self-determination as Indigenous affairs policy, Centre for Aboriginal Economic Policy Research, Australian National University, 230/2002, Pg 11, available at: \*Microsoft Word - DP 230.doc (anu.edu.au) [last accessed August 2021]
- 48 Moran M, Morter D and Curth-Bibb J, 'Funding Indigenous Organisations: Improving Governance Performance through Innovations in public Finance Management in Remote Australia' 2014, Australian Institute of Health and Welfare, *Closing the Gap Clearing House*, Cat no. IHW 141.
- 49 Sanders, as above note 49. Sanders outlines that the phrase 'an Indigenous order of Australian government' can be seen as a use of the term 'self-determination' and applies when Indigenous organisational processes represent and articulate First Nations interests and exercise their own governmental jurisdictions. (pg. 16)
- 50 Smith, W, quoted in Curchin K and Rowse T 'Taxpayers' Money? ATSIIC and the Indigenous Sector in Indigenous Self-Determination in Australia ed. by Rademaker L and Rowse T, 2020, ANU press, pg 148
- 51 For the next three years, the two governments agreed to provide \$23.8 million for 1995-96, \$16.8 million for 1996-97 and \$17 million for 1997-98. (BCTC Annual Report, 1994-1995)
- 52 Prior to 2019, a percentage of that funding was borrowed by BC First Nations to support their treaty negotiations. the BC Treaty Commission now provides 100% contributions to BC First Nations to support their participation in treaty negotiations (2019-2020). For more information see: *Funding | BC Treaty Commission* [last accessed September 2021]
- 53 For more information, see the Victorian Government *Being Deadly & Proud Website, Being Deadly & Proud* (deadlyandproud.vic.gov.au) website provides Aboriginal Victorian and Traditional Owner stories and answers to Deadly Questions [last accessed June 2021]
- 54 See for more information, the *Te Arawhiti, the Office for Maori Crown Relations Annual Report 2019-2020*, available online at: *Te-Arawhiti-Annual-Report-2019-2020.pdf* (tearawhiti.govt.nz) [last accessed September 2021]
- 55 As above note 27





[www.qld.gov.au/treaty](http://www.qld.gov.au/treaty)