

## Queensland

*Fundamentally, we want to come together as a community and say this is the path we want to take, this is the path we want to explore, and it's through that process we'll get a time frame.*<sup>1</sup>

Deputy Premier Jackie Trad

*[Treaty is a] stepping-stone for the future for my children... so my kids understand the sky has no limit.*<sup>2</sup>

Anonymous participant at Queensland Treaty Working Group consultation, Logan, December 2019

*Treaty... means hope ... instead of banging our heads against the wall in a white man's system ... there was a system before white men came ... treaty means freedom to practice culture how we want to practice culture and having the resources and power to sort out issues ourselves.*<sup>3</sup>

Anonymous participant at Queensland Treaty Working Group consultation, Townsville, October 2019

## What is Treaty?

Australian governments and First Nations communities across the continent have signed many agreements.<sup>4</sup> These include significant arrangements about land rights, native title, and co-management of resources. But these are not treaties. A treaty is a special kind of agreement.

Treaty involves three elements: recognition of Indigenous people as polities, negotiation, and lastly a settlement of claims that provides for Indigenous self-government.

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<sup>1</sup> AAP, 'Queensland Launches Path to Treaty with State's Indigenous People', *Guardian Australia*, 14 July 2019  
<<https://www.theguardian.com/australia-news/2019/jul/14/queensland-launches-path-to-treaty-with-states-indigenous-people>>.

<sup>2</sup> Treaty Working Group, *Report from the Treaty Working Group on Queensland's Path to Treaty* (February 2020) 41.

<sup>3</sup> Treaty Working Group, *Report from the Treaty Working Group on Queensland's Path to Treaty* (February 2020) 42.

<sup>4</sup> Material in this factsheet is drawn from George Williams and Harry Hobbs, *Treaty* (Federation Press, 2<sup>nd</sup> ed, 2020).

The conditions are important. A treaty is an instrument that is designed to improve the lives of First Nations communities and aims to secure the foundations for a just relationship between Indigenous peoples and the State.

No formal treaty has ever been signed between Aboriginal and Torres Strait Islander peoples and the British or Australian governments. However, as early as the 1830s, British authorities in Tasmania considered the absence of treaty a glaring mistake.

### **What is the history of Treaty in Queensland?**

On 22 August 1770, Lieutenant James Cook landed on Bedanug Island off the south-western tip of Cape York. On the traditional lands of the Kaurareg and Gudang Yadhaykenu peoples, Cook claimed possession of the eastern Australian coastline for King George III. Cook did so against his instructions, which specifically directed him to ‘take possession’, ‘with the consent of the natives’.<sup>5</sup> Cook’s failure to negotiate, Cook’s failure to engage with the First Nations peoples of this continent, set in place a template that was followed by many others.

British colonisation in Queensland began in 1824 when a penal settlement was established at Moreton Bay. Colonisation soon gathered pace, as ‘aggressive land-hungry settlers and their workers’ raced northwards and westwards.<sup>6</sup> As they pushed the Frontier forward, conflict with First Nations peoples became especially violent. At Kilcoy in 1842, pastoralists gifted flour laced with strychnine to Aboriginal peoples, killing up to 70 people. Larger massacres in the following decades may have led to the death of up to 200 Aboriginal people at a time. Such brutality reflects the determination and resistance of First Nations peoples to defend their country.

By the mid-1870s, thousands of Aboriginal people were being killed each year. The attitude of white settlers was expressed clearly by Mary Durack:

...many settlers now openly declared that Western Queensland could only be habitable for whites when the last of the blacks had been killed out – “by bullet or by bait”.<sup>7</sup>

Without clear records, it is impossible to know how many Aboriginal people were killed during Queensland’s frontier wars, but various estimates exist. In 1972, historian Henry Reynolds suggested a ‘conservative estimate’ of 5,000 First Nations peoples killed.<sup>8</sup> Several decades later Reynolds acknowledged that ‘the figure must be significantly higher’.<sup>9</sup> In 2014, Ray Evans and Robert Ørsted-Jensen argued that up to

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<sup>5</sup> Secret Instructions from Baron Ed Hawke, Sir Piercy Brett and Lord C Spencer to James Cook, 30 July 1768, 1.

<sup>6</sup> Treaty Working Group, *Report from the Treaty Working Group on Queensland’s Path to Treaty* (February 2020) 17.

<sup>7</sup> Tom Griffiths, ‘But We Already Had a Treaty! Returning to the Debney Peace’, *Griffith Review 76: Acts of Reckoning* (2022) <<https://www.griffithreview.com/articles/but-we-already-had-a-treaty/>>.

<sup>8</sup> Henry Reynolds, ‘Violence, the Aboriginals and the Australian Historian’ (1972) 31(4) *Meanjin* 471.

<sup>9</sup> Paul Daley, ‘As the Toll of Australia’s Frontier Brutality Keeps Climbing, Truth Telling is Long Overdue’, *Guardian Australia*, 4 March 2019 <<https://www.theguardian.com/australia-news/2019/mar/04/as-the-toll-of-australias-frontier-brutality-keeps-climbing-truth-telling-is-long-overdue>>.

41,040 Aboriginal people in Queensland were killed by the Native Mounted Police alone.<sup>10</sup>

The desire for peace on the frontier may have led to the negotiation of local agreements between First Nations communities and pastoralists. Tom Griffiths has recently written of the Debney Peace of 1889. Struck between the Mithaka people and George Debney, the leaseholder of Monkira Station, the five-day peace ceremony drew up to 500 Aboriginal people. As Griffiths notes, no official notice was taken of this or perhaps other local ‘peace settlements’, because to do so would have recognised First Nations peoples’ rights and interests in the land.<sup>11</sup>

By the end of the 19<sup>th</sup> century, the frontier wars gave way to discriminatory and paternalistic legislation aimed at simultaneously segregating and assimilating Aboriginal peoples. In 1897, the Queensland Government implemented the *Aboriginals Protection and Restriction of the Sale of Opium Act 1897*, which inhibited basic and universal freedoms regarding issues of custody of children, control over personal property, movement, and labour for many Aboriginal peoples. This and other legislation continued to interfere with Aboriginal peoples’ rights. Indeed, as late as 1971 an Aboriginal person could be detained in a dormitory for attempting to ‘escape’ a government reserve in Queensland.<sup>12</sup>

In the early 1980s, Eddie Koiki Mabo initiated a claim to his traditional lands in the Torres Strait. In an attempt to pre-empt the case, the Queensland Parliament passed the *Queensland Coast Islands Declaratory Act 1985*. This legislation aimed to retrospectively prevent the rights claimed by the Meriam people. In 1988, the High Court ruled against the Queensland government, finding the legislation a breach of the *Racial Discrimination Act 1975*.

The case allowed Eddie Mabo’s claim to go ahead. In June 1992, the High Court found in favour of Eddie Mabo. The Court determined that the lands of this continent were not *terra nullius* and that the Meriam people were ‘entitled as against the whole world to possession, occupation, use and enjoyment of the island of Mer’.<sup>13</sup> The High Court judgments in the *Mabo v Queensland (No.2)* altered the foundation of land law in Australia and paved the way for the passing of the *Native Title Act 1993* (Cth) in the Australian Parliament the following year.

It was not until recently, however, that treaty talk has emerged in Queensland.

### Where are we up to?

In July 2019, Queensland Deputy Premier Jackie Trad announced that the State would begin a conversation about a pathway to treaty with Aboriginal and Torres Strait Islander peoples. Cynthia Lui, Iamalaig woman and Queensland’s first Torres Strait

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<sup>10</sup> Raymond Evans and Robert Ørsted-Jensen, “‘I Cannot Say the Numbers that Were Killed’”: Assessing Violent Mortality on the Queensland Frontier’ (2014) <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2467836](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2467836)>.

<sup>11</sup> Tom Griffiths, ‘But We Already Had a Treaty! Returning to the Debney Peace’, *Griffith Review* 76: *Acts of Reckoning* (2022) <<https://www.griffithreview.com/articles/but-we-already-had-a-treaty/>>.

<sup>12</sup> See George Williams and Harry Hobbs, *Treaty* (Federation Press, 2<sup>nd</sup> ed, 2020) 121.

<sup>13</sup> *Mabo v Queensland (No 2)* (1992) 175 CLR 1, 76 (Brennan J).

Islander Member of Parliament, remarked on the historic nature of the announcement, exclaiming that:

...this launch signifies a positive step in the right direction ...in achieving positive outcomes, meaningful outcomes leading into the future.<sup>14</sup>

The Government established a bipartisan Eminent Panel of First Nations and non-Indigenous leaders and a Treaty Working Group to advise on treaty process. The Treaty Working Group conducted public consultations across the state and provided a report to the Eminent Panel. The Eminent Panel engaged with key stakeholders across Queensland in the second half of 2019 and submitted 'Advice and Recommendations' to the Government in February and May 2020. The Queensland government responded positively in August 2020.

In February 2021, the Queensland government established the Treaty Advancement Committee (comprised of First Nations and non-Indigenous Queenslanders). The Committee undertook further consultations to assess support for the process and submitted a final report to government in October 2021.

In June 2021, the Government established a \$300 million Path to Treaty Fund to support the process. We are now waiting for a formal response to the Treaty Advancement Committees' report.

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<sup>14</sup> AAP, 'Queensland Launches Path to Treaty with State's Indigenous People', *Guardian Australia*, 14 July 2019  
<<https://www.theguardian.com/australia-news/2019/jul/14/queensland-launches-path-to-treaty-with-states-indigenous-people>>.