

## Tasmania

*I think that moral element is something that is not measurable in dollars and cents but is part of the whole psyche and social fabric of Tasmania that a treaty can deliver.<sup>1</sup>*

Palawa man and lawyer, Michael Mansell

*Once people understand the truth – the ongoing effects of dispossession – that will make it easier to accept terms of a treaty and the need for some remedy.<sup>2</sup>*

Former Governor of Tasmania, Kate Warner

### What is Treaty?

Australian governments and First Nations communities across the continent have signed many agreements.<sup>3</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.

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 Tasmania?

Prior to colonisation, an estimated 15,000 First Nations Peoples from nine separate nations inhabited Tasmania.

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<sup>1</sup> Fiona Blackwood, 'Tasmanian Treaty to Navigate Complex Path of Truth-Telling, Aboriginal Identity and Land Return', *ABC News* (10 October 2021) <<https://www.abc.net.au/news/2021-10-10/aboriginal-treaty-tasmania-talks-underway/100492656>>.

<sup>2</sup> Fiona Blackwood, 'Tasmanian Treaty to Navigate Complex Path of Truth-Telling, Aboriginal Identity and Land Return', *ABC News* (10 October 2021) <<https://www.abc.net.au/news/2021-10-10/aboriginal-treaty-tasmania-talks-underway/100492656>>.

<sup>3</sup> Material in this factsheet is drawn from George Williams and Harry Hobbs, *Treaty* (Federation Press, 2<sup>nd</sup> ed, 2020).

From first recorded contact in 1772, relations between Europeans and First Tasmanians were hostile. The first permanent European settlement in Tasmania was established at Risdon Cove. The initial population numbered fewer than 3,000 but less than 30 years later it had increased to about 23,500.

The rapid growth in the colonial population as well as the destruction brought upon First Tasmanians in terms of disease, dispossession and violence led in 1824 to the most extensive conflict in Australian history – the ‘Black War’. Historian Lyndall Ryan estimates at least 60 per cent of Tasmanian Aboriginals were killed during the war.<sup>4</sup> In 1832, George Arthur, the Governor of Van Diemen’s Land (now Tasmania) reflected on this conflict. He considered that it was ‘a fatal error ... that a treaty was not entered into with the natives’, and recommended a treaty be signed before a colony was set up in South Australia.<sup>5</sup>

From 1830, the First Tasmanians were removed to Flinders Island in the Bass Strait. They First Tasmanians were thought to be safe from colonial violence but conditions were poor and the Aboriginal people wished to return to their homelands. In 1846, the community petitioned Queen Victoria, alleging that they moved only after receiving certain assurances from George Augustus Robinson, a government official. Part of [the petition read](#):

Your Petitioners humbly state to Y[our] M[ajesty] that Mr. Robinson made for us & with Col. Arthur an agreement which we have not lost from our minds since & we have made our part of it good.<sup>6</sup>

Historian Henry Reynolds has argued that this agreement amounted to a verbal ‘treaty’ with the Crown.<sup>7</sup> Whether that was the case, the Crown did not honour their agreement.

Aboriginal Tasmanians remained determined in their struggle for land rights and recognition. In 1883, Aboriginal elders John Smith, John Maynard, Thomas Mansell, George Everett, Henry Beeton and Phillip Thomas wrote a letter to the Launceston Examiner, a Tasmanian newspaper. The men and their families had been relocated to Cape Barren Island.

We are under no obligation to the Government. Whatever land they have reserved for our use is a token of their honesty, inasmuch as it has been given in lieu of that grand island (Tasmania) which they took from our ancestors.<sup>8</sup>

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<sup>4</sup> Lyndall Ryan, *Tasmanian Aborigines: A History since 1803* (Allen & Unwin, 2012) 141-147.

<sup>5</sup> Lyndall Ryan, *Tasmanian Aborigines: A History since 1803* (Allen & Unwin, 2012) 115.

<sup>6</sup> Cited in Bain Attwood and Andrew Markus, *The Struggle for Aboriginal Rights. A Documentary History* (Allen & Unwin, 1999) 38.

<sup>7</sup> Henry Reynolds, *Fate of a Free People* (Penguin, revised edn 2004).

<sup>8</sup> Cited in Michael Mansell, ‘Talking Point: Still Proud, Still Here, Still Waiting’, *The Hobart Mercury* (27 July 2015)

<<https://www.themercury.com.au/news/opinion/talking-point-still-proud-still-here-still-waiting/news-story/58921321f310338d3248b97e23c6c1db>>.

Since the early 1970s, the Tasmanian Aboriginal Centre (TAC) (also known as the Tasmanian Aboriginal Corporation) has represented the political and community development aspirations of the Tasmanian Aboriginal community. Its 1977 petition to the Tasmanian Parliament requesting land rights became known as the Aboriginal Land Claim and led to legislation that returned 12 parcels of land to First Tasmanians.

The Aboriginal Provisional Government (APG) was formed on 16 July 1990. Established on the principle that Aboriginal Tasmanians are a sovereign people, the APG campaigns for Aboriginal self-determination and self-government. Rejecting assimilation into the Australian state, the APG's vision is for First Nations Peoples '[to take our place among the nations and peoples of the world, not beneath them](#)'.<sup>9</sup>

In 2016, First Tasmanians received Constitutional Recognition when legislation to amend the Constitution Act passed through Tasmania's Parliament and was granted Royal Assent. Tasmania's amended Preamble states that

the Parliament, on behalf of all the people of Tasmania, acknowledges the Aboriginal people as Tasmania's First People and the traditional and original owners of Tasmanian lands and waters; recognises the enduring spiritual, social, cultural and economic importance of traditional lands and waters to Tasmanian Aboriginal people; and recognises the unique and lasting contributions that Tasmanian Aboriginal people have made and continue to make to Tasmania.

### Where are we up to?

Tasmania has only recently committed to talking treaty. In 2018, the Tasmanian Labor party promised to hold treaty talks with First Tasmanians, but they failed to secure election. The Liberal party did not make, at that time, any pledges on treaty.

However, in June 2021, the Tasmanian government appointed former Governor Kate Warner and University of Tasmania Law School Dean Tim McCormack to consult Aboriginal Territorians on treaty. The primary objective of these consultations was to learn from Tasmanian Aboriginal people their thoughts on and aspirations for treaty, truth-telling, and reconciliation and to identify possible pathways towards these goals. After four months and more than 100 meetings, the [Pathway to Truth-Telling and Treaty](#) report was delivered in November 2021.<sup>10</sup> It recommended Tasmania establish a truth-telling commission and commit to a treaty process (among other things).

In March 2022, Premier Peter Gutwein announced that his government '[will establish an Aboriginal Advisory body that can, through co-design, work with the Government to establish](#)' a truth-telling process and a treaty process.<sup>11</sup> The government has allocated up to \$500,000 to support this process. It will also establish an Aboriginal Affairs, whole of Government Division within the Department of Premier and

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<sup>9</sup> Aboriginal Provisional Government <<http://apg.org.au/>>.

<sup>10</sup> Kate Warner and Tim McCormack, *Pathway to Truth-Telling and Treaty: Report to Premier Peter Gutwein* (November 2021).

<sup>11</sup> Peter Gutwein, 'Next Steps on Pathway to Truth-Telling and Treaty' (Media Release, 1 March 2022) <[https://www.premier.tas.gov.au/site\\_resources\\_2015/additional\\_releases/next\\_steps\\_on\\_pathway\\_to\\_truth-telling\\_and\\_treaty](https://www.premier.tas.gov.au/site_resources_2015/additional_releases/next_steps_on_pathway_to_truth-telling_and_treaty)>.

Cabinet, comprising the Office of Aboriginal Affairs and Aboriginal Heritage Tasmania, as well as staff from other Departments, such as Health and Education.

In April 2022, Premier Gutwein resigned. It is not clear whether his replacement, Premier Jeremy Rockliff will continue or pause these preliminary steps towards treaty.