

Treaty in Queensland

“Fundamentally, we want to come together as a community and say this is the path we want to take, we want to explore, and it’s through that process we’ll get the time frame.”¹

Deputy Premier Jackie Trad

“[Treaty is a] stepping-stone for the future for my children... so my kids understand the sky has no limits.”²

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 practise culture and having the resources and power to sort out issues ourselves.”³

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

“What we do next on the Path to Treaty will define our humanity, our sense of fairness, and the legacy we leave our children.”⁴

Premier Anastacia Palaszczuk, August 2022

¹ Australian Associated Press, [‘Queensland launches path to Treaty with State’s Indigenous People’](#), *The Guardian*, July 14, 2019, 1.

² State of Queensland, [Report from the Treaty Working Group on Queensland’s Path to Treaty](#) (2020).
³ [Report from the Treaty Working Group on Queensland’s Path to Treaty](#), February, 2020.

⁴ ‘Queensland Government’, [Palaszczuk Government launches the start of the formal Path to Treaty](#), accessed July 18, 2023.

What is treaty?

Australian governments and First Nations communities across the continent have signed many agreements.⁵ 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 meant to reconcile the past with the present and make for a better future for all. A treaty should also improve the lives of First Nations communities and aim to secure the foundations for a just relationship between First Nations 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, the British authorities in Tasmania considered the absence of a treaty as 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'.⁶ Cook's failure to negotiate and to engage with the First Nations

⁵ [Harry Hobbs and Georgina Williams](#), 'Treaty-Making in the Australia Federation', *Melbourne University Law Review*, no.1, (2019), 178.

⁶ 'National Library of Australia', [Secret Instructions from Baron Ed Hawke, Sir Piercy Brett and Lord C Spencer to James Cook](#), accessed July 18, 2023.

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.⁷ 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.⁸ Larger massacres in the following decades may have led to the death of up to 200 Aboriginal people at a time. Such brutality was met with the determination and resistance of First Nations peoples to defend their lives and 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."⁹

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.¹⁰ Several decades later Reynolds acknowledged that 'the figure must be significantly higher'.¹¹ In 2014, Ray Evans and Robert Ørsted-Jensen argued that up to 41,040 Aboriginal people in Queensland were killed by the Native Mounted Police alone.¹²

⁷ State of Queensland, [Report from the Treaty Working Group on Queensland's Path to Treaty](#) (2020).

⁸ [Colonial Frontiers Massacres: 1842 massacre](#)

⁹ 'The University of Newcastle', [Centre for 21st Century Humanities](#), accessed July 18, 2023.

¹⁰ Henry Reynolds, '[Violence, the Aboriginals and the Australian Historian](#)', *Meanjin Quarterly*, March 4, 2019, 1.

¹¹ Paul Daley, '[As the toll of Australia's Frontier brutality keeps climbing Truth-Telling is long overdue](#)', *The Guardian*, March 4, 2019, 1.

¹² Paul Daley, '[Why the number of Indigenous deaths in the frontier wars matters](#)', *The Guardian*, July 15, 2014.

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.¹³

By the end of the 19th 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* (Qld), 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.¹⁴

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* (Qld).¹⁵ 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

¹³ Tom Griffiths, '[But We Already Had a Treaty! Returning to the Debney Peace](#)', *Griffin Review*, no. 76 (2022).

¹⁴ George Williams and Harry Hobbs, *Treaty*, (The Federation Press, 2nd Edition, 2020).

¹⁵ 'AIATSIS', [The Mabo Case](#), accessed July 18, 2023.

against the whole world to possession, occupation, use and enjoyment of the island of Mer'.¹⁶ The High Court judgment 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, the then 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, lamalaig woman and Queensland's first Torres Strait 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."¹⁷

The Government established a bipartisan Eminent Panel of First Nations and non-Indigenous leaders and a Treaty Working Group to advise on treaty process.¹⁸ 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 (comprising of First Nations and non-Indigenous

¹⁶ High Court of Australia, *Mabo v Queensland (No 2)*, accessed July 19, 2023.

¹⁷ Australian Associated Press, '[Queensland launches path to Treaty with State's Indigenous People](#)', *The Guardian*, July 14, 2019, 1.

¹⁸ '[Queensland Government', Path to Treaty](#), accessed 20 June, 2023.

Queenslanders).¹⁹ 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. In March 2022, the QLD government responded to the Treaty Advancement Committee's recommendations and committed to establishing a legislated First Nations Treaty Institute, a Truth-telling and Healing Inquiry, as well as an Independent Interim Body (IIB), composed of First Nations leaders and non-Indigenous representatives, to oversee treaties processes in Queensland.²⁰

The Queensland government established the inaugural IIB on 16 August 2022 – renamed the Interim Truth and Treaty Body (ITTB) – which consists of ten members to oversee the co-design of treaty and truth-telling reforms with First Nations peoples.²¹ On the same date, the Queensland government signed a Path to Treaty Commitment that signifies the State being open to hear First Nations-led truth-telling.²²

The *Path to Treaty Bill 2023* (Qld) was tabled by Premier Palaszczuk to the Queensland Parliament on 22 February 2023, and then referred to the Community Support and Services Committee for further review.²³ The *Path to Treaty Bill 2023* outlined the objective to legislate a First Nations Treaty Institute that would assist Aboriginal and Torres Strait Islander Queenslanders to develop a framework for treaty negotiations with the government, and a Truth-telling and Healing Inquiry to investigate the impacts of colonisation on First Nations peoples.²⁴

¹⁹ 'Queensland Government', [Queensland Government's historic commitment to Treaty-making process](#), August 13, 2020, 1.

²⁰ [Path to Treaty Bill 2023](#), accessed June 20, 2023.

²¹ [Interim Truth and Treaty Body 2023](#), *Path to Treaty Bill*, accessed June 20, 2023.

²² 'Queensland Government', [Queensland's Path to Treaty Commitment](#), accessed June 20, 2023.

²³ 'Queensland Parliament', [Report No. 30, 57th Parliament - Path To Treaty Bill 2023](#), accessed June 20, 2023.

²⁴ 'Queensland Government', [Path to Treaty Bill 2023 Queensland Legislation](#), accessed June 20, 2023.

Read more: ANtar (national), ANtar Queensland and Australian Lawyers Alliance's (ALA) joint [Submission on Queensland's Path to Treaty Bill 2023](#).

Path To Treaty 2023 Public Forums were held across regional Queensland, led by ITTB between 20 to 24 March 2023, where ITTB and First Nations participants discussed the Institute and Inquiry's governance and representation in order to co-design a pathway to treaty.²⁵ Aunty Cheryl Buchanan, Co-chair of ITTB and a Guwamu woman from Southwest Queensland, encouraged First Nations and non-Indigenous people to participate in community yarning sessions, stating that:

“Treaty, through truth-telling, is not about guilt, but more about honesty. Truth-telling will not be easy for any of us. We will need to confront the positive and negative stories honestly and openly from both sides—First Nations communities and Government. That’s how we will get to treaty-negotiations.”²⁶

On 21 April 2023, the Community Support and Services Committee tabled its review and support of the *Path to Treaty Bill 2023* and on 9 May 2023 the State government tabled its response to their review.²⁷

In October 2023, the Queensland Liberal National party withdrew their support for treaty in the wake of the national referendum where almost 70 percent of Queensland voters rejected the Voice to Parliament proposal. Opposition leader David Crisafulli stated that “a path to treaty will lead to greater division” and the LNP would no longer pursue a treaty if elected next October.²⁸ Legal experts

²⁵ Joseph Guenzler, [‘First Queensland public forums on Truth and Treaty announced’](#), National Indigenous Times, March 17, 2023, 1.

²⁶ ‘National Indigenous Radio Service’, [QLD Treaty Body Holds First Public Forums](#), accessed June 20, 2023

²⁷ ‘Queensland Parliament’, [Report No. 30, 57th Parliament - Path To Treaty Bill 2023](#), accessed June 20, 2023.

²⁸ Eden Gillespie and Ben Smee, [“Queensland LNP abandons support for treaty with First Nations people,”](#) *The Guardian*, Oct 19 2023.

claim that Queensland's Path to Treaty process could face a tough road ahead after the state's LNP withdrawal of support. While the treaty process would be at risk of being abandoned with a change of Government, it does not legally need bipartisan support to proceed.²⁹

In April 2024, Queensland Minister for Treaty and Aboriginal and Torres Strait Islander Partnerships, Leeanne Enoch, announced appointments of members for the Truth-telling and Healing Inquiry as well as the First Nations Treaty Institute Council.³⁰ The Inquiry was customised to facilitate the participation of First Nations People by adopting a culturally appropriate and people-centred approach.³¹

In May 2024, the Terms of Reference, which guides the work of the Truth-telling and Healing Inquiry, were released as part of the Path to Treaty Act 2023.³² The Path to Treaty Act 2023 was passed in the State Parliament in May 2023 and became law upon proclamation on 26 April 2024. This legislation, co-designed with the Interim Truth and Treaty Body (ITTB), is the first of its kind in Queensland and establishes the judicial framework of the First Nations Treaty Institute as well as the Truth-telling and Healing Inquiry.³³ The Inquiry, which has the power to compel government and executive officers to appear and to produce documents, began on Monday 1 July 2024 and is expected to be held over the next three years, unless extended.³⁴

As of September 2024, Queensland began holding educational forums ahead of the launch of the Truth-telling and Healing Inquiry, with some of the first forums

²⁹ Victoria Pengilly, "[Queensland's Path to Treaty process can proceed without bipartisan support, legal experts say](#)," ABC News, Oct 21 2023.

³⁰ Queensland Government, "[Appointment of leaders brings truth-telling and healing closer](#)," The Queensland Cabinet and Ministerial Directory, accessed August 22, 2024.

³¹ Queensland Government, "[About the inquiry](#)," accessed August 22, 2024.

³² Queensland Government, "[Truth-telling and Healing Inquiry Terms of Reference](#)," accessed August 22, 2024.

³³ Queensland Government, "[Queensland's Path to Treaty](#)," accessed June 20, 2023.

³⁴ Queensland Government, "[Truth-telling and healing](#)," accessed August 27, 2024.

were held on Waiben, Thursday Island, in the Torres Strait.³⁵ The formal launch of the Inquiry is 16 September 2024.

To follow the most recent developments on treaty in the state, please refer to ANTAR's [Treaty in Queensland timeline](#) on our website.

³⁵ [Torres Strait Islander community thankful to see Queensland's truth-telling and healing inquiry launch](#), NITV / SBS News, 10 September 2024.

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to First Nations Peoples as the traditional owners
of the lands on which we work across the continent.**

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