

Supplementary Advice  
and Recommendations  
from the Eminent Panel  
on Queensland's

# **PATH TO TREATY**

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May 2020

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# EMINENT PANEL LETTER TO THE MINISTER

29 May 2020

The Honourable Minister Crawford MP  
Minister for Aboriginal and Torres Strait Islander Partnerships  
PO Box 15457 City East  
Queensland 4002

Dear Minister Crawford

On 3 February 2020 we provided the former Deputy Premier, Treasurer and Minister for Aboriginal and Torres Strait Islander Partnerships with a letter of advice on a possible Path to Treaty for Queensland. This advice was informed by a Report prepared by a Treaty Working Group and followed a process of Statewide consultations with First Nations Peoples and non-Indigenous Queenslanders. The letter of advice detailed eight (8) recommendations as to how the Queensland Government and Parliament might proceed on a Path to Treaty.

Since the delivery of the advice of the Path to Treaty Eminent Panel, Queensland along with the rest of Australia has been responding to the extraordinary circumstances occasioned by the worldwide COVID-19 pandemic. The public health response to the pandemic has necessitated major changes to everyday life in Queensland requiring significant alterations to the policy and budgetary priorities of the Government. Further the sitting pattern and practices of the Queensland Parliament have also been adjusted with reduced sitting days for the balance of the current Parliament.

In light of this reality which was obviously not envisaged when the Panel presented its February 2020 advice, the Panel believes it should provide a short supplementary advice and amend those recommendations which are self-evidently no longer achievable given the changes wrought by the pandemic. The balance of this letter provides the Panel's supplementary advice.

## Overview

The principal recommendation made by the Panel and Working Group was that Queensland should proceed on a Path to Treaty with the ultimate aim of reaching a treaty or treaties with the First Nations of Queensland. This recommendation stands as does each of the recommendations made as to the legislative and institutional arrangements to auspice the Path to Treaty and give to the focus to matters of:

- Truth Telling and Healing;
- Capacity Building and;
- Community Understanding and Engagement.

Accordingly the Panel believes the Government should proceed with the preparation of a response to the Panel's advice and Working Group Report and place before the Parliament a Bill to establish the First Nations Treaty Institute and First Nations Treaty Future Fund. In essence the matters which in the Panel's opinion require amendment are those which go to the timing of the implementation of the recommendations.

## Timing of the Implementation of Recommendations

In framing its February 2020 advice, the Panel believed it was highly desirable that momentum towards a Path to Treaty developed through the community consultations be maintained and to this end recommended certain actions be taken in the first half of 2020 namely:

- that the Queensland Government make a Treaty Statement of Commitment to express the Government's intention to proceed on a Path to Treaty by taking the actions recommended by the Panel;
- placing before Parliament a Bill to further the Path to Treaty by establishing the First Nations Treaty Institute and the First Nations Future Fund and providing the framework for matters such as treaty negotiation and the emergence of First Nations representative structures and;
- allocation within the Queensland Budget for the 2020/21 financial year of funds sufficient to further the proposed institutional arrangements to enable the Path to Treaty to proceed.

It is understood that the COVID-19 pandemic response means these recommendations are no longer achievable in the first half of 2020 given the priority afforded to pandemic measures by the Queensland Cabinet, the alteration and reduction in Parliamentary sitting days and the delay to the delivery of both the Federal Budget and the Queensland Budget. Further it is acknowledged that budget priorities will understandably be shaped by the public health and economic consequences of the pandemic.

## Amended Recommendations

In the Panel's view it is important that the Government take a number of measures on the Path to Treaty at the earliest practical opportunity and certainly before the expiry of the current Parliament.

The Panel recommends that the Government respond to the Panel and Working Group Recommendations and make a Statement of Commitment to further lasting reconciliation by detailing its intentions to proceed on the Path to Treaty during the term of the next Parliament - by taking the actions contained in the 3 February 2020 letter of advice. This Statement of Commitment should be made in this term of Parliament. Further the Panel believes that the Report of the Treaty Working Group and this advice together with the advice of 3 February 2020 should be published and made freely available to the public in advance or no later than at the time of the making of the Statement of Commitment.

For ease of reference a modified list of all recommendations is attached to this letter which removes references to implementing recommendations in this term of Parliament.



Dr Jackie Huggins AM  
Co-Chair, Eminent Panel



Professor the Hon Michael Lavarch AO  
Co-Chair, Eminent Panel

# REVISED RECOMMENDATIONS

## 1. Path to Treaty – Overview

- 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.

## 2. The First Nations Treaty Institute

- 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.
- 2.3 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 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.

### 3. Truth Telling and Healing

- 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:
  - 3.3.1 To inform popular and academic understanding of First Nations and the history of colonisation and;
  - 3.3.2 As source material for the development of mandatory educational curricula.

### 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.
- 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.

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

### 6. Implementation - The Path to Treaty Act

- 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;
  - 6.2.7 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.

## **7. Implementation - Resourcing and creation of the First Nations Treaty Future Fund**

- 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.

## **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.

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