

Aboriginal Affairs

Investigation into the Development and
Implementation of a Treaty with the First Nations'
Peoples of New South Wales

Committee Investigating Aboriginal Affairs

Investigation into the Development and Implementation of a Treaty with the First Nations' Peoples of New South Wales

The Hon. Noah Smith, Youth Minister for Aboriginal Affairs

The Hon. Myles Waciega, Youth Shadow Minister for Aboriginal Affairs

The Hon. Ned Graham, Sponsoring Youth MLC

The Hon. Chelsea Burgess-Hannon, Refuting Youth MLC

The Hon. Stella Jeong, Sponsoring Youth MLC

The Hon. Ryan Xia, Refuting Youth MLC

Terms of Reference

That the Committee Investigating Aboriginal Affairs would:

1. Produce this Report in order to investigate the various issues which stand to be addressed by the implementation of a Treaty with the First Nations' peoples of NSW.
2. Assert that the implementation of such a Treaty is an important step in the process of Indigenous self-determination and Reconciliation.
3. Identify Indigenous land rights as a critical component of such a Treaty.
4. Strive to recognise First Nations' peoples as the traditional custodians of Country.
5. Advocate for the revitalisation of Indigenous languages across New South Wales.
6. Undertake a review of the powers of government in relation to the exercise of authority over Aboriginal and Torres Strait Islander children within the child protection system.
7. Address the disparity in life expectancy between Indigenous and non-Indigenous people.
8. Commit to addressing inequalities for Aboriginal people in the healthcare system.

Table of Contents

Terms of Reference	1
Table of Contents	2
Chairperson’s Foreword	3
Introduction	4
Background	5
Recommendations	8
Constitutionally-enshrined Voice to the NSW Parliament	8
Indigenous Land Rights	8
Recognition of Indigenous Cultural Elements	9
Revitalisation of Traditional Indigenous Languages	9
Checks and Balances on Government Powers	10
Improved Healthcare Services and Care Networks	10
Economic Development and Opportunity	10
Educational Attainment	11
Royal Commissions and Special Commissions of Inquiry	12
Final Recommendations	13
Constitutionally-enshrined Voice to the NSW Parliament	13
Indigenous Land Rights	15
Recognition of Indigenous Cultural Elements	16
Improved Healthcare Services and Care Networks	16
Royal Commissions and Special Commissions of Inquiry	17
Dissenting Statements	19
Revitalisation of Traditional Indigenous Languages	19
Checks and Balances on Government Powers	21
Economic Development and Opportunity	22
Educational Attainment	23

Chairperson's Foreword

Yaama Noah nga. My name is Noah, and I am a proud descendant of the Kamilaroi people. I would like to acknowledge that we are all on Aboriginal land and that connection to the land is essential and eternal. I would like to thank Elders past and present for their care of Country and their fierce advocacy for Indigenous peoples. I am honoured to serve as the Minister for Aboriginal Affairs in the 2022 YNSW Youth Parliament program. Always was, always will be.

The Aboriginal Affairs Committee identified a myriad of issues which must be addressed by the 2022 NSW Youth Legislative Council. Central to a supportive and culturally-sensitive discussion was maintaining an open dialogue and ensuring all Committee members' voices were heard. Ultimately, the Committee makes the determination that the development and implementation of a Treaty between the State of New South Wales and its First Nations' peoples warranted thorough examination and scrutiny.

This Report will scrutinise the issue of a Treaty through three distinct lenses. The first is health and wellbeing: which this Committee aims to address through investigating methods to increase life expectancy and improve healthcare systems; second is connection to culture: which encompasses areas such as land rights, cultural education and language revitalisation; and third is inter-governmental and intra-governmental relations; including Constitutional recognition of Indigenous custodianship, an enshrined Indigenous voice to Parliament, and resource allocation to Royal Commissions and Special Inquiries

If considered and implemented, the recommendations put forward by this Report have significant scope to improve the quality of life for First Nations' peoples and encourage unprecedented provisions for self-determination and Indigenous sovereignty.

As the 2022 Minister for Aboriginal Affairs, I would like to extend my appreciation and thanks to all parties involved in the research and development of this Report. This includes government departments, organisations, academics and researchers, Elders, and community members for their contributions to this Report. I would acknowledge the efforts of all members of the 2022 Committee Investigating Aboriginal Affairs. I would also acknowledge the efforts of our Committee Advisor Ethan Floyd and the support of 2019 Youth Premier Hamani Tanginoa.

In closing, I would quote a song written for Yothu Yindi by the late Dr G. Yunupingu: "Treaty, yeah. Treaty now."

I recommend this Report to the Chamber for consideration.

The Honourable Noah Smith, Youth MLC
Youth Minister for Aboriginal Affairs

Introduction

In 1770, Lieutenant James Cook landed in Kamay - later named Botany Bay - on the land of the Gweagal clan of the Dharawal nation. Upon landing, Captain Cook was met with opposition by two warriors, whom he subsequently shot. This was the first encounter between the Indigenous people of New South Wales and the British, and set the tone for Indigenous and non-Indigenous relations which persist to the present day. The legal status of Australia as terra nullius allowed the British occupation of Australia without cessation of Indigenous sovereignty. It wasn't until June 3rd 1992 - with the High Court's ruling of *Mabo v Queensland* - that acknowledgement of Aboriginal Australians as custodians was observed. A Treaty is the only document that can provide legal sovereignty for the First Nations' peoples of New South Wales. A strong undercurrent of tension still rests within the relationship between these two groups, even evident in our contemporary society today. A crucial first step to reconciling these disparities is the development and implementation of an effective and co-designed Treaty.

A Treaty may be mutually beneficial for both the Indigenous and non-Indigenous community. The implementation of a Treaty is not outside the scope of possibility for the NSW government; in fact, Australia is the only Commonwealth nation not to have a treaty with its Indigenous peoples. It is important that any Treaty must be co-designed and effectively implemented. An example of a mismanaged Treaty was that between the New Zealand government and the Māori people on February 6th 1840. This Treaty failed to achieve better outcomes for the Māori people of Aotearoa, resulting in the theft of land. It is important that a Treaty in NSW is co-designed to avoid a similar outcome.

Former promises of establishing a treaty by the government have never been kept.

The lack of a formal peace settlement in the form of a treaty only serves to exacerbate the conflict between the Aboriginal community and the government. A Treaty in New South Wales offers recognition of the Indigenous peoples of New South Wales and their occupation of Australia before the arrival of Cook's fleet. It also enables the government to take action and make a step towards reparations for the Aboriginal people of the land. This would mean returning land to Aboriginal people which allows for greater economic advancement and a great life quality. This would strengthen relations and deepen understanding in regards to the continued connection between Aboriginal Australia and the wider community.

This report will look at the absence of a Treaty and its impacts on the Indigenous people of our land. It will subsequently recommend action on how to implement the components of a treaty between the Aboriginal people of NSW and the New South Wales government. It aims to create a path for legislation for a Treaty as well as better treatment of and reconciliation with the first peoples of the land.

Background

To this day, Australia is still the only Commonwealth country that lacks an official treaty with its Indigenous peoples. Our government has still not accepted that the British colonial legacy formed by the invasion in 1788 and subsequent massacres is their burden to bear, as well as that of the society that was built on top of the horrendous disaster that took place on this sacred land. We have still failed in establishing the rights for our First Nations population, and have denied them their right to self-determination. We have belittled their political status and have failed to adequately recognise that there were, in fact, functioning communities here before Europeans. This has resulted in systemic issues that face the Aboriginal Australian population because of the lack of recognition of their sovereignty and rights as the First people on this land.

The New South Wales Parliament, justice system and government must understand that Treaty is an unbelievably important step in the goals of creating an equitable and inclusive society. We lack this ability to think of those that were here before us. Thus, we need a Treaty to further reconciliation and self-determination in NSW. This Treaty will be a part of mending the relationship between the colonial government and the Indigenous people of NSW.

It must firstly be recognised by the New South Wales government that a treaty would benefit the relations between non indigenous and indigenous people it would cover the issues that are prominent and affect the everyday life of aboriginal people due to the systemic problems from colonisation and would acknowledges the damage done to the first people of Australia and promises to repair these past mistakes. It also allows for Aboriginal participation in the wider community. The notion of a treaty is already well established in other nations with a history of colonialism, and has proven in many cases to improve indigenous relations with the government and the people of the nation.

The Treaty of Waitangi was signed on 6 February 1840 and has since played a major role in the political relations between the indigenous Maori and the Government of New Zealand. Multiple copies are in existence, both in Maori and English text. The Treaty of Waitangi ensured the Maori people would not feel as if their rights had been ignored. Main points of the treaty include:

1. Article One of the Maori text gives the British governance rights of New Zealand. The English text, on the other hand, cedes "all rights and powers of sovereignty to the Crown".
2. Article Two of the Maori text establishes that Maori will retain full chieftainship of their lands, villages and all their treasures. The English text established the continued ownership of the Maori over their lands and exclusive right of pre-emption to the Crown.
3. Article Three gives Maori people full rights and protections as British subjects.

While this Treaty was largely ignored by British colonialists during the second half of the 19th Century, leading to a large loss of Maori-controlled lands, it became a platform for claiming additional rights to sovereignty and to reclaim lost land. The treaty became a

central part in the interpretation of land rights and relations between Maori people and the State in the 1960s and 70s. The 1975 Treaty of Waitangi Act established a tribunal tasked with interpreting the treaty and researching breaches of the treaty by the British government. Settlements have been paid to the Maori as a result. Regardless, the Treaty of Waitangi managed to restore rights to the indigenous Maori people of New Zealand after their disenfranchisement by the government over the 19th and 20th Centuries.

It must also be acknowledged that miscommunication over interpretation of the Treaty of Waitangi led to the New Zealand Wars of 1845 to 1872. As a result, any Treaty between the Australian State and the Indigenous People of the land must be clearly communicated on both sides to prevent potential conflict between the two parties.

Historically, any form of progress towards a treaty with indigenous Australians has been rejected or ignored. The only pre-21st Century attempt to negotiate a form of treaty with indigenous Australians was Batman's treaty, for the purchase of land around Port Phillip, near present day Melbourne. In an attempt to preserve the fragile legitimacy of Australia's state as terra nullius prior to British arrival, this was annulled by the Governor of New South Wales in 1835. The Barunga Statement of 1988 drew a promise from Prime Minister Bob Hawke to commit to a treaty by 1990, but this was not fulfilled. In 2017, Malcolm Turnbull rejected the call for Indigenous voice to parliament, an advisory body protected by the constitution which could lead to a treaty.

A treaty between the Aboriginal peoples of New South Wales and the Government of New South Wales provides the indigenous population of Australia with their sovereignty and the formal recognition of the first nations' presence prior to the landing of the First Fleet. A treaty will legally recognise their culture and history, as well as the Aboriginal identity, as equals to ourselves. Following Article 14 of the United Nations Declaration of the Rights of Indigenous Peoples, a treaty will also provide the following:

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

These particular objectives look towards the improvement of education of Aboriginal Australians, which, in turn, can improve the employment outcomes and living standards of our indigenous population. A treaty which addresses these points will improve access to education for the indigenous community, and provide more effective education while preserving indigenous Australian culture. As a result, this can also provide a significant boost to the labour force, and increase the overall spending power of Australians, supporting the Australian economy.

The disparity in opportunity between Aboriginal Australians and their fellow counterparts has been evident in Australian society in our entire history. Specific areas of concern are employment, education, health and wellbeing. Statistics have firmly established the presence of the gap in living standards between these two groups. For example:

1. Over the decade from 2006-2016, the employment rate for Indigenous people fell from 48 to 46.6 percent. The non-Indigenous employment rate, on the other hand, stayed relatively stable in comparison at around 72 percent.
2. School attendance rate for indigenous students was around 83 percent in comparison to around 92 percent of non indigenous students in 2019.
3. Indigenous students only comprise around 1.7% of the domestic university student population, according to the 2018 Closing the Gap report.

This gap illustrates the systemic inequality and inequity against the Aboriginal Australian community and as such must be addressed by the government. The indigenous population is clearly disadvantaged in terms of opportunity and attainment at all levels of education and training. Since higher levels of education directly correlates with increased employment opportunities and outcomes, it is clear that the indigenous population will as a result be prone to greater poverty, lower quality housing, and as a result poorer health.

Recommendations

Constitutionally-enshrined Voice to the NSW Parliament

The Voice to Parliament is the first part of the process of Voice - Treaty - Truth. It gives light to various issues that affect Indigenous people in NSW, and assists in self-determination and reconciliation. This committee recommends that a Voice to Parliament be made up of Councillors from Aboriginal Land Councils, giving voice to those who represent Indigenous people at a local level. Furthermore, the Voice will allow for direct consultation with leaders of Indigenous organisations and communities, such as the Aboriginal Health Service. Voice is the most important part of the implementation of Treaty in NSW, and will help in the development of Treaty that benefits all Indigenous peoples in NSW.

Indigenous Land Rights

By acknowledging the traditional rights of the Meriam people to their land in *Mabo v Queensland [No. 2]* (1992), the High Court held that Native Title exists for all of Australia's First Nations peoples¹. Furthermore, this decision saw the Court extinguish the legal presumption of 'Terra Nullius', acknowledging that Australia was home to Aboriginal and Torres Strait Islander peoples before European colonisation².

Out of this judgement emerged the Native Title Act 1993 (Cth) – Commonwealth legislation outlining the process through which Aboriginal communities are able to lodge native title claims. In NSW, the Aboriginal Land Rights Act 1983 (NSW) (ALRA) was introduced prior to the 'Mabo decision', "established to return land in NSW to Aboriginal peoples through a process of lodging a claim(s) for certain Crown lands."³

While the NSW Aboriginal Land Council notes that Land Rights and Native Title are two different mechanisms "by which Aboriginal peoples can have their rights recognised in land", with both systems "operating under ... different laws and differ[ing] in the rights they can provide", they similarly note that it is important local Aboriginal Land Councils and Native Title claimants "work together to obtain the best of both schemes."⁴

Despite having a system for Indigenous land rights claims at both the state and federal level⁵, large portions of NSW have neither been determined to hold Native Title nor been transferred to First Nations communities under the ALRA. Specifically, only half of NSW "is currently under native title claims"⁶ and, since passing the ALRA, the NSW Government has

¹ [Mabo Decision](#) (National Museum of Australia, Not Dated).

² Ibid.

³ [Crown Lands Review](#) (NSW Aboriginal Land Council, Not Dated).

⁴ [Comparison of Land Rights and Native Title in NSW Factsheet](#) (NSW Aboriginal Land Council, 2012).

⁵ I.e. those as set out in the [Aboriginal Land Rights Act 1983 \(NSW\)](#) and the [Native Title Act 1993 \(Cth\)](#), respectively.

⁶ [Native title](#) (NSW Department of Planning and Environment, Not Dated).

only “granted or part-granted 3,885 Aboriginal land claims”, transferring a mere 164,032 hectares of land (0.20% of the state) to the ownership of Aboriginal Land Councils⁷.

Given the indivisible nature of First Nations communities, culture, history, spirituality, and land, reform to the process of granting Aboriginal land claims must comprise the centrepiece of a Treaty between the NSW Government and the state’s First Nations peoples.

Recognition of Indigenous Cultural Elements

Aboriginal and Torres Strait Islander peoples are not currently recognised in the Constitution. In the 1967 referendum, Australian voters agreed to change our Constitution to give the federal parliament the power to make laws in relation to Aboriginal and Torres Strait Islander people and to allow for Aboriginal and Torres Strait Islander people to be included in the census. However this referendum did not recognise Aboriginal and Torres Strait Islander peoples as first peoples. Despite this, many Aboriginal and Torres Strait Islander peoples today are opposed to simply constitutional recognition and are seeking treaties that offer more substantial recognition instead.

Indigenous leaders disavowed symbolic recognition in 2015 when they gathered from across Australia to speak with the then prime minister, Tony Abbott, and the then opposition leader, Bill Shorten, at Kirribilli House, to talk about the direction recognition was headed, with fears there were plans for more symbolism.

The 40 Indigenous leaders present adopted the Kirribilli Statement. It read: ‘Any reform must involve substantive changes to the Australian Constitution. It must lay the foundation for the fair treatment of Aboriginal and Torres Strait Islander peoples into the future.’

Revitalisation of Traditional Indigenous Languages

Language is an essential element of every culture worldwide. Under the United Nations declaration on the rights of Indigenous people, Section 13 states that “Indigenous peoples have the right to revitalise, use, develop and transmit to future generations their histories, languages, oral traditions” this right needs to be upheld and it is vital that the language education is included in the curriculum as it would lead to greater understanding and knowledge. Currently 9.8% of the Aboriginal and Torres Strait Islander population speaks an Aboriginal or Torres strait islander language (or 63 754 people). Only 2.8% of this population is in New South Wales. (Australian census 2016). This would put the responsibility to fight the extinction of language on the Department of Education and the Department of Aboriginal Affairs.

It would operate in the same manner and be based on the already existing Aboriginal language and culture nest program. This would be a three stage plan with each stage only stating after reviews.

⁷ [Aboriginal land claims approved at Mathoura](#) (NSW Department of Planning and Environment, Not Dated) and [Area of Australia – States and Territories](#) (Geoscience Australia, Not Dated).

Stage 1: The program would be taught in Aboriginal high schools, in person or online for Aboriginal students that don't attend these schools as a replacement for mandatory languages other than English.

Stage 2: Expansion to all schools that request this program. This stage would also have the launch of an online language program.

Stage 3: Would mandate the above things in the curriculum for all students k-10.

This is a vital part of protecting culture and a treaty would be the way to protect and teach it to those who are the future of aboriginal Australia, children.

Checks and Balances on Government Powers

While governments have authority over child protective services, and have the responsibility to protect children from harm, they should not be able to seize children without consultation of more than one family member, at the very least. This problem of young Indigenous children being ripped away from their families will lead to another stolen generation. The government was warned about this in 2015. They did not heed this warning. We recommend that the government adopts all the recommendations in the 'Independent Review of Out-of-home care in New South Wales'.

Improved Healthcare Services and Care Networks

Lower Aboriginal child mortality rates must be achieved as everyone has the right to live a long, healthy life. Additionally, more frequent deaths drastically impacts the mental health of Indigenous peoples, causing unnecessary trauma amongst communities.

In 2018, the Indigenous child mortality rate was 141 per 100,000 – twice the rate for non-Indigenous children (67 per 100,000)⁸. Furthermore, the average male Aboriginal life expectancy is 71.6 years, 8.6 years lower than their non-Aboriginal counterparts and the average female Aboriginal life expectancy is 75.6 years, 7.8 years lower than non-Aboriginal women⁹.

Lower child mortality rates can be achieved with better health care systems that both help and respect Aboriginal people, better education around pregnancy, and ensuring all Indigenous mothers have access to antenatal care.

Economic Development and Opportunity

It is important that traditional custodians of our land have equal opportunity in many areas including employment. Statistically Indigenous people have a lower economic status than all Australians due to a lack of opportunity in education and job prospects. For example Non-Indigenous Australians reported a median gross personal income per week of \$780 in 2017–

⁸ [Child Mortality](#) (Closing the Gap Report, 2020, cited by Australian Government, Not Dated).

⁹ [Aboriginal life expectancy](#) (Korff, 2021).

18, 60% higher than that for Indigenous Australians in 2018–19, after adjusting for inflation. Also, a higher proportion of Indigenous people aged 15 and over received a government pension or allowance as their main source of income (52%) compared with non-Indigenous people aged 15 and over (25%) in 2017. These disparities can increase the likelihood of poverty, homelessness, health issues, family breakdowns, crime and incarceration which will lead to lower representation of indigenous communities.

Educational Attainment

Educational attainment has a direct, positive correlation with future economic outcomes¹⁰ and, therefore, low Indigenous educational attainment must be addressed in any treaty between the NSW Government and its First Nations peoples. In 2016 and 2017, 46% of Year 12 Aboriginal students received the Higher School Certificate, compared to 76% of non-Aboriginal students. The 2020 Closing the Gap report “makes it clear that the [education] gap [between Indigenous and non-Indigenous students] remains significant and stubborn in relation to certain issues, especially literacy and numeracy skills and school attendance.”¹¹ Furthermore, as education outcomes are inextricably linked to attendance and engagement¹², heightened Aboriginal educational attainment must be driven by increased engagement and attendance.

To assist in closing the education gap between Indigenous and non-Indigenous students, this committee therefore recommends that a NSW Government treaty with its First Nations peoples promises to:

1. Prioritise bringing majority-Aboriginal schools to 100% of their Schooling Resource Standard by 2025 to improve educational resources for Aboriginal students.
2. Prioritise Aboriginal students in receiving the ‘Start Strong Free Preschool’ program, encouraging strong attendance and engagement with education during students’ formative years.
 - a. Provide Aboriginal preschoolers with free care from Monday to Friday in the last year before they commence formal schooling by 2025¹³.
3. Provide for the development of personalised support plans in consultation with the families of Aboriginal students with an attendance of less than 70%¹⁴ to encourage greater educational engagement through increased attendance.

¹⁰ [Integrated Data Research, Benefits of Educational Attainment, Income](#) (Commonwealth Department of Education, Skills and Employment, 2022).

¹¹ [The Gap is Still Far from Closed: Addressing Aboriginal and Torres Strait Islander Educational Disadvantage](#) (Hughes, 2020).

¹² [Student Attendance and Educational Outcomes: Every Day Counts](#) (Hancock, Shepherd, Lawrence, and Zubrick, 2013).

¹³ Currently, the NSW Department of Education stipulates that [this program will be delivered by 2030 for all eligible children](#) (NSW Department of Education, 2022).

¹⁴ Currently, personalised support plans are only developed between schools and students, neglecting the important role of family in matters of school attendance.

4. Increase engagement with, and the teaching of, Aboriginal history and culture in schools, including as outlined by this report's recommendation titled 'Revitalisation of Traditional Indigenous Languages'.
5. Introduce an Assistant Minister for Aboriginal Education to oversee the implementation of the above.
6. Revise the objectives of this 'Aboriginal Education Package' periodically (i.e. once every two parliaments).

Royal Commissions and Special Commissions of Inquiry

A Treaty between the NSW Government and the state's First Nations peoples must not only acknowledge the importance of addressing First Nations' issues, but provide a systematic means through which to identify and address them.

Royal Commissions and Special Commissions of Inquiry (RC&SCoI) are "investigation[s], independent of government, into a matter[s] of great importance."¹⁵ Such commissions "have broad powers to hold public hearings, call witnesses under oath and compel evidence"¹⁶ to identify an issue(s) and provide recommendations to the government on how to best fix said issue(s).

Royal Commissions have had considerable success in effecting positive change. For example, the Royal Commission into the New South Wales Police Force led to a "purg[ing] ... of a rollcall of rotters", significantly reducing the prevalence of corruption within the NSW Police Force¹⁷. Special Commissions of Inquiry have been similarly useful, with the recent Special Commission of Inquiry into the Ruby Princess providing valuable recommendations on how various guidelines, procedures, reporting processes, and pieces of legislation should be reformed to mitigate the effects of future health crises in NSW¹⁸.

Given the evident effectiveness of RC&SCoI's, this committee recommends that a Treaty between the NSW Government and the state's First Nations peoples establishes a system by which a First Nations' Voice to Parliament can advise that the Governor establish RC&SCoI's to identify, and provide recommendations on how to best address, First Nations' issues.

¹⁵ [About the Royal Commission](#) (Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Not Dated).

¹⁶ Ibid.

¹⁷ [Holding Judgement](#) (Sydney Morning Herald, 2007).

¹⁸ [Report of the Special Commission of Inquiry into the Ruby Princess](#), pg. 34 (Walker, 2020).

Final Recommendations

Constitutionally-enshrined Voice to the NSW Parliament

Voice to Parliament is a key stage in self-determination and reconciliation. It would be essential to include Voice in a Treaty. The model of this Voice is particularly important for improving the lives and amplifying the input of First Nations people. The issue with Voice itself is whether it should be to the government or to the parliament. The Voice to Government is not what the Uluru Statement from the Heart calls for, nor is it the most effective means of achieving just outcomes. The Voice to Government relies on the government acting on the recommendations, without the recommendations being aired in parliament. This would stifle Voice and delay self-determination.

“We call for the establishment of a First Nations Voice enshrined in the Constitution.”
The Uluru Statement from the Heart

Voice should be a clear, loud and public means of communication for First Nations people to ensure that they are heard and understood. Voice should be deeply rooted in the legal system and have real power in the parliament. The past issues with implementing Voice have been in the model itself, and how Voice would be structured, what it would look like, what powers it would have, etc. This is what we seek to dispel.

This is the framework we are putting forward for a Voice to Parliament:

Investiture

- The Voice to Parliament should be invested by Aboriginal people, for Aboriginal people. Thus, we propose the creation of a New South Wales First Nation’s Congress (FNC). This Congress would operate akin to a parliamentary party
- The FNC would have a leader, the Chancellor, who attends Parliament, flanked by two other members of the FNC for support. The Chancellor acts as a spokesperson for the FNC, chairing meetings and being the public voice for the FNC
- The Congress would be made up of Councillors from state Aboriginal Land Councils, and the Chancellor is elected by the Congress. We seek to utilise existing structures to create a democratic and intuitive Voice to Parliament.

Protection

- The existence of the Voice will be enshrined in the New South Wales Constitution, as well as in a Treaty, to add an extra layer of protection for the Voice.
- The amendment will mandate that the Voice be unhindered from attending and contributing to Parliamentary debate.
- The Standing Orders will mandate that the Voice has priority to speak at Question Time, and have the ability to question both the Opposition and Government during Parliamentary sessions.

Powers¹⁹

- The Voice will have some powers in the passing of legislation. The FNC will have the ability to veto legislation, when the Chancellor has a unanimity in the First Nations Congress, via formal vote. This furthers self-determination, a key aspect of Treaty. This vote will take place after a bill is read to the Assembly, after passing through the Council.
- The Voice will also have the power to recommend commissions to the Governor. This furthers the power of Voice, and allows for wider reform
- The Voice will have power to make Freedom of Information requests on any topic deemed necessary by the Chancellor of the FNC.

Roles

- The role of the Voice will be an immensely important one. Voice will be essential in drafting and enacting Treaty, as well as determining just outcomes for Indigenous people in NSW. It will take into account opinions and views of both regional and metropolitan representatives.
- The Voice will also be informed by Indigenous health organisations and other services that interact day-to-day with Indigenous people. This will be achieved by direct consultations with leaders of these organisations, such as the Aboriginal Health Service.
- The Voice will also engage with Aboriginal Affairs committees, where the Chancellor can delegate another member of the FNC to act on behalf of the Voice
- The Voice sits in on meetings of the Legislative Assembly, however it can sit in on Legislative Council sittings if the Chancellor decides as such.

Limitations

- The Voice does not have the same powers as a normal MLA, such as;
 - Votes of confidence,
 - Voting for legislation,
 - Proposing legislation,
 - Forming government

Our roadmap to implementation;

1. Form a Provisional Congress of Aboriginal Land Councils, who will elect a Chancellor to represent the PCALC in Parliament, and establish links to Aboriginal organisations that will facilitate consultations.
2. Develop and lobby for a Treaty to be passed through NSW Parliament, with Voice enshrined in the Treaty
3. Draft, with the help of government, a constitutional amendment, enshrining the Voice as the peak representative body for Indigenous people in NSW
4. Pass this amendment through the Assembly
5. Formally establish the First Nations Congress
6. Begin the process of Truth by creating a Makarrata Commission, hypothetically linking with other Makarrata Commissions around Australia, to further reconciliation.

¹⁹ <https://alc.org.au/indigenous-voice-2/>

First Nations Voice to Parliament is an essential part of the process of Voice - Treaty - Truth.

Indigenous Land Rights

The connection between land, water, and Aboriginal and Torres Strait Islanders is central to First Nations' cultures and communities. Thus, land rights must be the focus of any Treaty between the NSW Government and NSW's First Nations peoples.

Additionally, the lack of effective legislation at both the Commonwealth and state levels to facilitate the determination of Native Title claims and Land Rights claims, respectively, has revealed the need for such a Treaty²⁰ in NSW.

The NSW Department of Planning and Environment notes that “following European settlement, colonial and then successive state governments asserted ownership over the land. They proceeded to survey and allocate land, and to record and guarantee tenures. This created freehold property rights for settlers. The remainder of the land became Crown land, held in public trust.”²¹ In 1983, the Aboriginal Lands Rights Act was introduced to recognise the effects of past government decisions on Indigenous land rights and “create a system of Aboriginal land rights to compensate Aboriginal communities for the loss of their land by allowing for the return of some Crown land to Aboriginal ownership.”

However, the current system outlining Indigenous land right claims in NSW is flawed. As of July 10th, 2020, there were “37,000 unresolved Aboriginal land claims in New South Wales awaiting determination by the government”²². Not only is this inordinately lengthy backlog a “national disgrace” and a “form of institutional racism”²³, it places the burden of proof for land rights claims on First Nations communities – the supposed traditional owners of this nation who, the law acknowledges, inhabited Australia prior to European invasion.

This committee recommends that the government improve the land rights afforded to NSW's First Nations peoples by:

1. Introducing a legal presumption that, unless the NSW Government can prove it has a genuine and immediate need for land classified as ‘Vacant’ or ‘Claimable’ Crown Land²⁴ (as of this report's publication), the proposed First Nations Voice to Parliament has the right to said land.
2. Transferring all Vacant Crown Land to First Nations peoples by 2032 through the proposed First Nations Voice to Parliament and local Aboriginal Land Councils.
3. Establishing an independent body, overseen by the First Nations Voice to Parliament, that is responsible for:
 - a. Assessing First Nations land rights claims; and

²⁰ [Native title issues & problems](#) (Korff, 2021).

²¹ [Aboriginal land claims](#) (NSW Department of Planning and Environment, Not Dated).

²² [‘A national disgrace’: 37,000 Aboriginal land claims left languishing by NSW](#) (Allam, 2020).

²³ Ibid.

²⁴ As defined by the [Aboriginal Land Rights Act 1983 \(NSW\)](#).

- b. Managing land that has been transferred to First Nations peoples under the aforementioned program.
4. Maintaining the financial responsibilities currently associated with the upkeep of Vacant Crown Land (e.g. National Park costs).

Recognition of Indigenous Cultural Elements

Even though Aboriginal people are recognised as the first peoples of the state in the preamble of the NSW constitution, the NSW government can continue and expand its aid in righting this historic wrong of a lack of acknowledgement of Aboriginal and Torres Strait Islander peoples as a step towards reconciliation and giving recognition to Aboriginal and Torres Strait Islander peoples beyond symbolism.

These solutions include:

1. Incorporating traditional First Nations names in places either through dual naming or renaming, both acknowledges and celebrates the connection of First Nations people to those places. Name changes are significant in that they are a step in the multi-layered truth-telling process; acknowledging foremost, Aboriginal connection to Country. Aboriginal people hold knowledge, understanding, obligation and custodianship of the physical and cultural landscape, often expressed as Connection to Country. In other cases, it removes racist colonial names or acknowledges places where massacres of Aboriginal people took place.
2. Revising the curriculum to include education about general Aboriginal culture as well as the specific groups local to the schools' areas. This will help non-Indigenous students to develop a greater understanding of and connection with their Indigenous peers, building into lifelong acknowledgement of Indigenous culture and customs.
3. Introducing key Indigenous cultural events and dates as well as artwork, posters, plaques or artefacts in public spaces celebrates the rich local Indigenous culture and acknowledges the Indigenous peoples' deep connection to the land upon which we live.

Improved Healthcare Services and Care Networks

The causes of a high child mortality rate are majority from prenatal conditions examples include hypertension, obesity, and diabetes and additional risk from drinking and smoking whilst pregnant. This is due to a lack of well funded and functioning health systems in Aboriginal communities and in rural and regional areas. Another key reason for this is a lack of education on how to stay healthy and eat healthy which leads to conditions such as diabetes and obesity, as well as education on what mothers should do whilst pregnant when it comes to tobacco and alcohol.

Between 2016 and 2018, the rate of infant mortality was 4.4 per 1,000 for Aboriginal infants, compared with 2.9 per 1,000 for non-Aboriginal infants. We need further investment into Indigenous healthcare.

We recommend that the government does the following:

1. Direct more funding towards community-run Indigenous health services

2. Institute a state-wide action plan that seeks to create better health outcomes for Indigenous people
3. A program of education, done through community organisations, that informs Indigenous people, especially mothers, on the health issues related to pregnancy, and how best to protect the baby. This should be done through local language
4. Invest in affordable housing for Indigenous people, especially in remote areas, to improve living standards for individuals and families.

Royal Commissions and Special Commissions of Inquiry

A Treaty between the NSW Government and the state's First Nations peoples must provide a systematic means through which to identify and address First Nations' issues, acknowledging the importance of these issues to both the NSW Government and broader society.

Royal Commissions are the highest form of public inquiry across all Australian jurisdictions. As of this report's publication, no Royal Commission established on the advice of the NSW Government has investigated issues faced specifically by the state's Aboriginal population. This is despite disproportionate Aboriginal incarceration rates²⁵, large disparities between the life expectancies of Aboriginal and non-Aboriginal people²⁶, and the persistence of disproportionate Aboriginal educational disadvantages²⁷.

A legislative provision allowing the above-mentioned First Nations' Voice to Parliament to advise that the Governor establish Royal Commissions²⁸ and Special Commissions of Inquiry²⁹ would ensure both that First Nations' issues are investigated and that there is greater efficacy in addressing them.

The First Nations' Voice to Parliament should be allowed to operate independently of the Government in establishing a terms of reference and appointing a commissioner, although the Government should fund the commission and its expenses. This would maintain the integrity of said commissions while simultaneously ensuring that their efficacy is unimpeded.

To implement the above, the committee recommends that the Government implements legislative amendments which:

²⁵ [Aboriginal over-representation in the NSW Criminal Justice System](#) (Australian Bureau of Statistics, 2020, referenced in NSW Bureau of Crime Statistics and Research, 2021): "Latest figures indicate that the Aboriginal imprisonment rate in NSW is nearly 10 times the non-Aboriginal imprisonment rate."

²⁶ [3302.0.55.003 - Life Tables for Aboriginal and Torres Strait Islander Australians, 2015-2017](#) (ABS, 2018), referenced in *Aboriginal life expectancy* (Korff, 2021): "On average, Aboriginal males live 71.6 years, 8.6 years less than their non-Aboriginal peers, women live 75.6 years, 7.8 years less."

²⁷ [The Gap is Still Far from Closed: Addressing Aboriginal and Torres Strait Islander Educational Disadvantage](#) (Hughes, 2020): "the 2020 Closing the Gap report makes it clear that the [education] gap [between Indigenous and non-Indigenous students] remains significant and stubborn in relation to certain issues, especially literacy and numeracy skills and school attendance."

²⁸ As defined by the [Royal Commissions Act 1923](#).

²⁹ As defined by the [Special Commissions of Inquiry Act 1983](#).

1. Confer on a First Nations' Voice to Parliament the power to recommend that the Governor of NSW establish a Royal Commission or Special Commission of Inquiry by issuing letters patent under the Public Seal.
2. Prevent the Government from interfering with any such commission or the business it conducts.
3. Compel the Government to fund such commissions in their entirety, with a minimum level of funding for a commission to be prescribed by the independent costings of the Parliamentary Budget Office.
4. Stipulate that the number of commissions established on the discretionary advice of the First Nations Voice to Parliament be capped at four per parliament, with any further commissions established during a parliamentary term to be recommended to the Governor only after prior parliamentary approval (i.e. a successful vote in the NSW Legislative Assembly).

Dissenting Statements

This report covers many topical and ongoing issues in relation to Treaty. It goes in-depth into what a Treaty should include, and how Treaty would benefit First Nations people. We believe that this report is incredibly important for furthering Treaty in NSW. We support all the recommendations on this report.

However, some extremely alarming recommendations were not included in the final recommendations;

We believe that the revitalization of traditional Indigenous languages is an incredibly important element of a future Treaty. The revitalisation of Indigenous language is a keystone in the processes of self-determination and reconciliation. Time is of the essence in this area, as Indigenous language continues to disappear. This must be included.

We believe that Checks and Balances are an essential component of a future Treaty. This new Stolen Generation is an incredibly horrendous stain on the government, and a gross example of inaction on the part of the government. We think that this recommendation is incredibly significant because this continuing issue must be addressed, we cannot stress how important this issue is.

Another issue that we find with the recommendations is the power of the Voice to Parliament. Whilst we agree that a Voice is essential in a Treaty, the veto powers of the Voice present a political issue that could lead to undemocratic outcomes. These powers go against representative democracy, by prioritising the needs of the few over the many. Voice could stop the government from functioning, and from achieving reform in areas that may be perceived to disadvantage Indigenous people, but may benefit a large number of non-Indigenous people.

We recommend, instead, that the Voice has the ability to propose 'counter-bills', a piece of legislation that may do the same as the original, however be amended so it will remove any clauses or issues that the Voice had with the original bill. This would be proposed in the Assembly, when the original bill is being debated, This would remove the anti-democratic overtones that the original veto power would have. The bill will then be subject to the legislative process, where the counter-bill is voted on first, and then the original bill.

Overall, this report is an accurate reflection of the elements of Treaty. However, some immensely important recommendations are not included in the final report. Thus, we must reconsider these recommendations.

Revitalisation of Traditional Indigenous Languages

Language is a key part of all cultures around the world and it is especially vital in oral cultures such as Aboriginal and Torres strait island cultures. Under the United Nations declaration on the rights of Indigenous people, section 13, it states that "Indigenous peoples have the right to revitalise, use, develop and transmit to future generations their histories,

languages, oral traditions"³⁰ This now recognised right of language was taken away from the aboriginal people by the federal and state government through removal policies that created the stolen generation. Aboriginal people literally had the language which was a large amount of the culture physically beaten out of them. Currently 9.8% of the aboriginal and Torres strait islander population speaks aboriginal or Torres strait islander language or 63,754 people. Only 2.8% of this population is in New South Wales (Australian census 2016)³¹.

Areas where it was the hardest hit first, such as the sydney region, have less surviving language than languages from more remote areas such as Wiradjuri which is one of the most spoken languages in NSW. It is vital that these languages, no matter how much is left, are protected, valued and a large amount of resources go into the revitalization of language. The treaty would allow for the protection of language through making it a responsibility of the NSW Department of Education and Department of Aboriginal Affairs to ensure language is taught, respected and passed on throughout generations. This will be achieved by making language education a mandatory part of the curriculum.

The way this can be done would be through school as well as having a publicly available platform for language teaching. This model would be based on the already existing Aboriginal language and culture nest program run by the Aboriginal Affairs NSW.

This program would have 3 stages. The preliminary stakeholder involved with this program would be: the department of education, NESA, local language holders, Aboriginal and Torres Strait students, and the local community. This would be a joint program between the Department of Education and the Aboriginal Affairs NSW.

This would be a major step to reviving language as it teaches children, allowing them to have a better understanding and to know language and when there is a greater understanding there is more respect for Aboriginal people and their culture.

The three phases of this plan:

1. The program will be taught in person at primary and secondary schools with high Indigenous populations and online for Aboriginal students in schools with lower Aboriginal populations. This will be a minimum one hour a week in primary schools and as an optional subject for mandatory language education required by NESA in schools with lower Indigenous populations but a replacement for schools with a high population. There are 100 hours required by NESA to be completed over a 12 month period in either years 7 and 8 or years 9 and 10.³² The existing model has existing framework for First Nations languages but this new program based off the already existing Aboriginal languages and culture nests³³ in terms of the approach to language and language use and it would be put front and centre as a replacement

³⁰ [UN Declaration of Rights of Indigenous Peoples](#) (Australian Human Rights Commission, 2007).

³¹ [Language Statistics for Aboriginal and Torres Strait Islander Peoples](#) (ABS, 2016).

³² [Language participation in NSW secondary schools](#). (NSW Department of Education, 2018).

³³ [Aboriginal Languages and Culture Nests](#) (Aboriginal Affairs NSW, Not Dated).

and addition to the curriculum. This initial part of the program would be started by the start of the 2025 school year at latest.

2. The second phase of this program would be rolled out 24 months after the start of the first phase, if the initial program was successful (this would be measured by the centre for education statistics and evaluation)³⁴. The second phase would extend the program to all schools that request the program. Whether it would be in person teacher or digital would be dependent on the size of the class and amount of classes at a school. This phase would also include the launch of a digital online platform for language learning and as a language resource.
3. The final stage would be implemented after 24 months of the second phases, any necessary changes (as advised by the centre for education statistics and evaluation) would be made to the program. This stage would have a reassessment of the digital learning platform and decide if it should be discontinued or improved.

The final stage of the language education within schools would make it a mandatory subject in all years of schooling until year ten. This could be in addition to or as a replant of mandatory teaching of languages other than english.

This ensures that a Treaty will lead to a deeper understanding and revitalization of language and would teach it to those who are the future of Aboriginal Australia, children.

Checks and Balances on Government Powers

A key function of the state is to protect and serve their citizens. It has the responsibility to ensure that citizens have the best outcomes available to them, and that these are afforded by the full extent of the state's powers. It is a major issue, however, when the state uses it's power to demean and disadvantage their citizens, especially those most vulnerable. Furthermore, it is even more twisted when the state does this through its ill-gotten power.

We seek to place limitations on the powers of government in relation to the continuing effort of the government to separate Indigenous children from their families. The NSW government was given a report on this issue in 2015, the 'Independent Review of Out of Home Care in New South Wales' by former public servant David Tune. This report was damning for the out of home care system in New South wales.³⁵ However, very little has been done in response to this report. This report was released in 2015. Over the past 7 years, little has been done to fix this crisis. Indigenous children are still being taken from their homes and families, stripped of their culture and connection to land. We find this deplorable. This horrific inaction is creating a new Stolen Generation, which is incredibly appalling. The NSW government is a colonial government. We have no place to destroy Indigenous communities. We must take a more community and family approach to the issue of separating and seizing of Indigenous children.

³⁴ [Centre for Education Statistics and Evaluation](#) (CESE, Not Dated).

³⁵ ['Worse than negligence': NSW dragging feet on Aboriginal child removal reforms](#) (The Guardian, 2021).

Another key issue is Indigenous deaths in custody, a deeply troubling issue with the law enforcement system in NSW. Despite numerous reports, and a Royal Commission, Indigenous incarceration rates and deaths in custody have only increased in the past 20 years.

“Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future” – Uluru Statement from the Heart.

The amount of Indigenous children in the out-of-home-care system increased by 1,100 between 2016 and 2020, to 6,600³⁶.

We recommend that the government acknowledges the issues with out-of-home-care system;

- The significant disparity between Indigenous and non-Indigenous children that are in out-of-home-care
- The trend upwards of Indigenous children in child protection services
- The trauma and severity associated with separating Indigenous children from their family and culture
- The crime of creating another Stolen Generation.

Furthermore, we demand that the government implements the following recommendations;

1. The use of support packages to aid families and children in their day-to-day lives, including consultation with multiple family members.
2. Prioritise the interests of the child in protective care cases
3. Use the seizing of a child as a last resort in child protective care cases
4. A Royal Commission into the Department of Communities and Justice in relation to whether their current practices are providing for just outcomes for Indigenous children, taking into account culture and connection to land.

Economic Development and Opportunity

Economic development driven by local Aboriginal and Torres Strait Islander people is the key to developing strong and sustainable economies that can empower local residents and provide greater employment opportunities. The NSW government can assist in providing economic opportunity and development through:

1. Grants for indigenous businesses/start-ups. Indigenous businesses are significantly more likely to employ Indigenous workers which reduces Indigenous unemployment and promotes financial independence in such communities. Also, investing in

³⁶ [Out-of-home care and child removals](#) (AbSec, Not Dated).

Indigenous businesses leads to better outcomes in other areas including health and education in those communities.

2. Indigenous contracts for infrastructure projects in Indigenous communities allows Indigenous workers to be involved in the decision-making process of economic development for their own communities.

Educational Attainment

Educational attainment has a direct, positive correlation with future economic outcomes³⁷ and, therefore, must be addressed in any treaty between the NSW Government and its First Nations peoples. In 2016 and 2017, 46% of Year 12 Aboriginal students received the Higher School Certificate, compared to 76% of non-Aboriginal students. The 2020 Closing the Gap report “makes it clear that the [education] gap [between Indigenous and non-Indigenous students] remains significant and stubborn in relation to certain issues, especially literacy and numeracy skills and school attendance.”³⁸ Furthermore, as education outcomes are inextricably linked to attendance and engagement³⁹, heightened Aboriginal educational attainment must be driven by increased engagement and attendance.

To assist in closing the education gap between Indigenous and non-Indigenous students, this committee therefore recommends that a NSW Government treaty with its First Nations peoples promises to:

1. Prioritise bringing majority-Aboriginal schools to 100% of their Schooling Resource Standard by 2025 to improve educational resources for Aboriginal students.
2. Prioritise Aboriginal students in receiving the ‘Start Strong Free Preschool’ program, encouraging strong attendance and engagement with education during students’ formative years.
 - a. Provide Aboriginal preschoolers with free care from Monday to Friday in the last year before they commence formal schooling by 2025⁴⁰.
3. Provide for the development of personalised support plans in consultation with the families of Aboriginal students with an attendance of less than 70%⁴¹ to encourage greater educational engagement through increased attendance.
4. Increase engagement with, and the teaching of, Aboriginal history and culture in schools, including as outlined by this report’s recommendation titled ‘Revitalisation of Traditional Indigenous Languages’.

³⁷ [Integrated Data Research, Benefits of Educational Attainment, Income](#) (Commonwealth Department of Education, Skills and Employment, 2022).

³⁸ [The Gap is Still Far from Closed: Addressing Aboriginal and Torres Strait Islander Educational Disadvantage](#) (Hughes, 2020).

³⁹ [Student Attendance and Educational Outcomes: Every Day Counts](#) (Hancock, Shepherd, Lawrence, and Zubrick, 2013).

⁴⁰ Currently, the NSW Department of Education stipulates that [this program will be delivered by 2030 for all eligible children](#) (NSW Department of Education, 2022).

⁴¹ Currently, personalised support plans are only developed between schools and students, neglecting the important role of family in matters of school attendance.

5. Introduce an Assistant Minister for Aboriginal Education to oversee the implementation of the above.
6. Revise the objectives of this 'Aboriginal Education Package' periodically (i.e. once every two parliaments).