

Path to Treaty Bill 2023

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Thursday, 16 March 2023

Committee Secretary
Community Support and Services Committee
Parliament House
George Street
Brisbane Qld 4000

Email: cssc@parliament.qld.gov.au

Dear Secretary

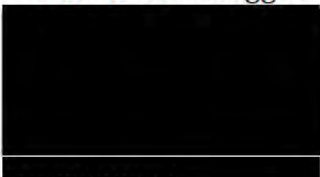
Our organisation, FAIRA, herewith submits our submission to the Inquiry of the Parliamentary Community Support and Services Committee into the *Path To Treaty Bill 2023*.

You may note that our organisation is a national Aboriginal and Torres Strait Islander organisation, accredited to the United Nations under ECOSOC NGO General Consultative Status, and as such we hope to be considered to be an expert body of the Aboriginal and Torres Strait Islander Peoples in regard to the human rights of Indigenous Peoples.

We take a great interest in this policy and legislative program to promote and protect the rights of the Indigenous Peoples in Queensland. Accordingly we formally request and opportunity to meet with the CSCC members to present our comments on the draft legislation.

We look forward to further engagement with this policy and associated legal reforms. Our submission is attached.

Yours in the struggle



Chairperson

Restoring the Human Rights and Dignity of the Indigenous Peoples of Australia in the 21st Century

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**FAIRA'S SUBMISSION
TO THE
COMMUNITY SUPPORT AND SERVICES COMMITTEE**

**COMMENTS ON THE
PATH TO TREATY BILL**

About us

1. The Foundation for Aboriginal and Islander Research Action (FAIRA) is a First Nations not-for-profit organisation based in Queensland. We are a human rights defender. We have been in existence for more than 45 years and our mission is to advocate for the rights of Indigenous Peoples in Queensland and throughout Australia.
2. FAIRA asserts that the First Nations peoples, in seeking non-discrimination and equality, are coming from a position of weakness created under Australian sovereignty and law. So much of our capacity to advocate for the rights of our peoples has been denuded. As such, FAIRA bears a heavy burden of responsibility to stand up for our rights of our peoples. Governments have all the power in the relationship with First Nations peoples. This proposed legislation can go a long way to acknowledge and rectifying this power imbalance if it is done in a genuine spirit of transferring power and control.

Overview

3. FAIRA is deeply concerned about the amount of time allowed for submissions. The Bill was tabled on 22 February and submissions close on 17 March; just a little over three weeks for busy NGOs to review the Bill and related information and prepare comprehensive submissions. This has not allowed us the time needed to properly consider such an important piece of legislation. The Bill presents Queensland with an historic opportunity to remedy historical wrongdoing. When Queensland hosts the Olympic Games in 2032, we should all be able to look back on this moment – the passage of an agreed Path to Treaty Bill – and acknowledge the platform it set for a fundamental reshaping of the relationship between First Nations peoples and the State of Queensland.
4. We urge the Government not to rush the legislation but instead allow reasonable time for it to be properly considered by all parties with an interest. There are none with a greater interest in the Bill than First Nations peoples.
5. In our letter to the Hon the Premier, FAIRA noted 'her fine words when introducing the Bill, but noted that, *'... we were expecting a much more substantial Bill with far more control handed to First Nations Peoples'*. A copy of our letter is attached at **APPENDIX A**.
6. Whilst the principles outlined in the Bill are noble, FAIRA considers the Bill does not live up to these high-minded aspirations. For instance, the Bill refers to the importance of self-determination to First Nations peoples but does not itself recognise or acknowledge the right of First Nations peoples to self-determination. It states that the rights of First Nations peoples are respected in accordance with the United Nations Declaration on the Rights of Indigenous Peoples but makes no commitment to work with First Nations peoples to bring all Queensland laws into conformity with that Declaration.

7. Indeed, the recent knee-jerk decision around juvenile bail laws which will see many more of our young people imprisoned is a clear example of our rights being set aside with no attempt at free, prior and informed consent even contemplated.
8. We are particularly concerned that the Bill is incomplete. It does not establish statutory Land Councils in Queensland to represent the interests of First Nations peoples. It does not establish a Future Fund to support First Nations self-government after a Treaty has been negotiated. We note this Future Fund was recommended by the Treaty Working Group and repeat the call for such a fund.
9. We are also concerned that the Bill does not go far enough in ensuring the Institute Council's independence from government, that there is insufficient accountability to First Nations peoples, that it does not establish a framework to progress land rights of First Nations peoples in Queensland, and that it does not establish financial security to support First Nations as we take control over delivery of important programs and services to our people.
10. Further the Bill does not require openness and honesty, requiring that all government programs and services are on the table for scrutiny and negotiations. Without this provision, Ministers and departments may pick and choose what programs they are willing to negotiate with the likely result that very little will be negotiable. We understand, from the Aotearoa New Zealand experience, the government agreed the default position was that nothing was exempt from negotiations.

Independence of the Treaty Institute

11. The Bill currently states that Governor in Council appoints Council members on the recommendation of the Minister. The Minister can only recommend Aboriginal and/or Torres Strait Islander persons to the Council if satisfied they are appropriately qualified, but the Bill makes no reference to required qualifications.
12. The Bill requires the institute reflect the diversity of Aboriginal and Torres Strait Islander people and gender. Are these the qualifications the Minister must consider?
13. Does it mean Councillors must be qualified to perform the functions and exercise the powers of the Treaty Institute. If so, does that mean an expressions of interest process is conducted in which applicants must show how they are qualified and capable of performing the functions and exercising the powers of the Institute?
14. If so, wouldn't it be more transparent for the Bill to include the qualifications required?
15. These provisions apply for all Councils – the inaugural one and all subsequent ones. The only difference is the Minister must consider any recommendations by the Inaugural Council in relation to the appointment of Council members after the inaugural Council.
16. Presumably this is intended so that the inaugural Council can recommend a different mechanism of selection.

The Institute Council

17. This is at odds with the recommendation of the Treaty Working Group that, after the first Council, members be directly appointed by First Nations representative mechanisms and structures (not by the Governor in Council). This was to shield the Council from undue political influence and make it truly independent.
18. Under this Bill, the inaugural Council may recommend an election or some other representative process, but there may present them with a conflict of interest. For example, if they wish to be reappointed for a second term, they may be motivated to propose an appointment process rather than an election or other selection process.

19. The Treaty Council will work with the Government to develop a Treaty-making Framework. This is a critical piece of work as the framework will set the basis for treaty negotiations in Queensland. It must be developed by representatives of First Nations peoples in whom we all have confidence. If the Council is the body which represents the interests of First Nations peoples in Queensland, it must be seen to be representative of our interests and effectively independent of Government. Under this Bill, it cannot be viewed as totally independent. Not when its members are chosen by Government on the advice of a Minister.
20. Will the Qld Voice, once established be given some role in Council appointments? This will not be feasible if the First Nations organisations such as Land Councils, Native Title Representative Bodies, PBCs etc do not feel represented in the arrangements which establish the Voice.
21. FAIRA argues that the government and parliament should revisit the Aboriginal and Torres Strait Islander Land Acts which were legislated in 1991 and establish statutory independent Land Councils, elected by First Nations peoples within their regions. There should be at least four statutory Aboriginal Land Councils and a Torres Strait Land Council.
22. We are aware that Torres Strait Islanders have campaigned for more than five decades for recognition as a Territory under the government of Torres Strait Islanders. The aspirations of the peoples of the Torres Strait for territorial integrity and self-government should be capable of being realised under these regional laws and structures.
23. The Bill should require that these land councils nominate two of their members to the Institute Council – noting the desirability for gender balance.

Accountability

24. The Bill includes other Acts which apply to the Institute. Presumably these set out the Institute's accountability and reporting requirements. These requirements should be akin to those which apply to CCC or the Auditor General but ultimate accountability should be attributed to the First Nations peoples of Queensland and not the Crown.
25. No one is suggesting that there should not be accountability. Far from it, but the accountability should be first and foremost to the First Nations peoples of Queensland. Reports should be to the First Nations peoples and, following scrutiny and some form of adjudication as may be appropriate, tabled in Parliament.

The Treaty Fund

26. The Bill makes no mention of the Treaty Fund established to support the operations of the Institute, and to assist First Nations prepare for and conduct treaty negotiations. Shouldn't one of the functions of the Council be to administer the appropriations from the Treaty Fund? Any alternative where the Government holds the purse strings compromises the independence of the Treaty Institute.

Treaty Tribunal

27. FAIRA notes there is nothing in the Bill that established an independent tribunal to adjudicate disputes between First Nations peoples and the state. The Treaty Working Group recommended a tribunal to oversee the treaty making process, monitor compliance, arbitrate and resolve disputes and review treaties over time. This may have been held over until such time as treaties are negotiated. However, FAIRA would argue that this is very much needed when the Institute Council is developing a treaty-making framework with the Queensland Government. As stated above, this framework will be critically important as it sets the ground-rules for treaty negotiations. The government will have the power and resources of the State going into negotiations with a Treaty Council whose members are chosen by the Government. There is no consequent status or arrangement for the First Nations participants.



13 March 2023

The Hon Anastacia Palaszczuk MP
Premier and Minister for the Olympic and Paralympic Games
1 William Street
Brisbane QLD 4000

email: thepremier@premiers.qld.gov.au

Dear Premier

We write to you in relation to the Path To Treaty Bill 2023. The Foundation for Aboriginal and Islander Research Action (FAIRA) is a First Nations not for profit organisation based in Queensland. We have been in existence for 45 years and our mission is to advocate for the rights of the Aboriginal and Torres Strait Islander Peoples in Queensland and Australia.

FAIRA wishes to congratulate your government for having the courage to progress Treaty in Queensland between the state and First Nations peoples who occupied all the Lands, waters and adjacent Islands of what is now called Queensland.

We note in particular your comments when introducing the legislation, viz

The treaty is not a gift to be bestowed; it is a dignity that is long since owed. Our country and our state were not empty when the first settlers arrived—far from it. It was home then, as it is now, to the world's oldest continuing cultures with their own languages, lores, customs and beliefs stretching back perhaps 60,000 years.

After reading such fine sentiments, we were expecting a much more substantial Bill with far more control handed to First Nations Peoples. We note this Bill establishes a Treaty Institute with its own governing Council and a Truth-telling and Healing Inquiry. We further note that the main purposes of the Treaty Institute are to develop and provide a framework for treaties to be negotiated and for support to First Nations Peoples to participate in treaty negotiations.

This framework is a critical first step on the path to treaty. It has the potential to establish important principles and standards to underpin treaty negotiations. Indigenous People must have trust and confidence that the Institute Council will ensure our rights, as elaborated in the United Nations Declaration of Indigenous Rights, are upheld and not diminished.

As such, it must be, and must be seen to be, independent of Government. The Bill says it will be act independently (clause 18), but how can a Council whose members are appointed by the Governor in Council on advice from the Minister be considered independent?

FAIRA believes the Councillors must be selected by a process, either by direct elections or alternative mechanisms, where they are selected to represent First Nations' interests.

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FAIRA also believes Institute Council should be accountable to First Nations through a review/audit arrangement where representatives of First Nations annually report on the structures and procedures. This also strengthens the independence of the Council.

This goes to FAIRA's second concern. The Bill does not progress First Nations Land Rights in Queensland. We were told in 1989-1990 that the Goss administration would deliver Land Rights but the legislation that eventuated did nothing of the sort. More promises followed by disappointment.

This is an ideal opportunity to revisit Land Rights in the context of the Path to Treaty. Statutory Land Councils across the State along the lines of the four Land Councils established in the Northern Territory, should be considered, with members of those Land Councils being elected by their people. The Land Councils could then select the members of the Treaty Institute.

FAIRA is very pleased that the Government has established a Treaty Fund, the proceeds of which are to be used to fund the operations of the Institute and to support First Nations peoples in treaty negotiations. But the Fund is not mentioned in the Bill. How does the Treaty Institute and, through the Institute, the First Nations Peoples gain access to the Fund? Is this controlled by government?

Along with Treaty, FAIRA has long argued that First Nations Peoples must have a resource base to rebuild our communities, revitalise our cultures and languages, establish our own governance arrangements and fund our programs. A guaranteed percentage of the State's GDP would go some way to providing our Peoples with economic independence and the resources needed for self-government.

We ask that the 'Path To Treaty' proposed legislation incorporate:

1. Structural independence of the Treaty Institute and its Council.
2. First Nations review / audit of the Council's activities.
3. Establishment of Statutory Land Councils elected by their communities.
4. Land Councils to select Councillors of the Treaty Institute
5. Explicit reference to the Treaty Fund and automatic annual appropriations to the Institute for its operations and assistance for First Nations to participate in treaty negotiations
6. Strong governance arrangements with accountability and reporting to the Land Councils and, through them, their communities. and
7. A proportion of State GDP, proportionate to the Indigenous population of Queensland, to fund First Nations self-government.

Our Peoples have been continually frustrated by governments' saying the right words and promising brighter futures only to find the actions have not matched those words and the promises. Please do not let this be a repeat of all those earlier empty promises.

In conclusion, FAIRA seeks to meet with you at your earliest convenience to discuss these concerns of ours.

Yours in the struggle



Les Malezer
Chairperson, FAIRA

