

Path to Treaty Bill 2023

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Introduction

This submission will be relatively short as I do not wish to speak on behalf of, or in place of our first nations people. I believe it is the voices of our beloved first nations people that should be heard regarding this path to treaty Bill however, as a future legal practitioner heavily engaged in law reform, I do feel that I have a personal and professional obligation to protect the rule of law, the integrity of the legal system and the rights of others. To do this, I would like to provide limited comments on the proposed Path to treaty Bill for consideration by the Community Services and Support Committee.

As I have previously mentioned, I am a future legal practitioner, law student and President of the Central Queensland University Law Society as well as, a junior/student member of both the Queensland and New South Wales Law Societies, the Far North Queensland Law Association, Queensland Young Lawyers, Queensland Council for Civil Liberties, and the Australian Lawyers Alliance.

I have made submissions previously to this Committee and addressed the Committee in person, regarding the decriminalisation of certain public offences late last year in 2022.

Accountability and Liability

I would like the Committee to consider, clause(s) within this proposed Bill allowing the Queensland State Government, the Commonwealth, and other States to avoid any liability and accountability regarding any breaches or offences against this *Act*¹.

This *Act*² is to bind all persons including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States however, within the same relevant section of the *Act*³, the very next clause provides that the State, the Commonwealth, or another State cannot be prosecuted for an offence against this *Act*⁴.

All consequences of the first of the two clauses, is negated by the provision of the second clause. Any Act that binds a party to it and in this case, the State, the Commonwealth, and other States, yet provides no consequences, accountability and liabilities under that Act is useless and is not worth the paper it has been written on (so to speak). It becomes less an Act, and more a meaningless statement, an empty gesture, and a bit of a bagatelle. In the words of Cairns Magistrate Coates recently, '*a bagatelle is a bit of nothing really*'.

Could you imagine the *Police Powers and Responsibilities Act*⁵ without any provision for penalties under the *Act*? Providing for example, that the selling of dangerous substances and drugs illegal however, without any penalty, punishment, responsibility, and liability. All you

¹ *Path to Treaty Act 2022* (Qld) Part 1, Division 1, s 3

² *ibid* s 3 (1)

³ *ibid* s 3 (2)

⁴ *ibid* s 3

⁵ *Police Powers and Responsibilities Act 2000* (Qld)

really have is something of a mission statement and perhaps, something to aspire to, lacking any consequence.

The current Queensland Government has done this sort of thing before. In 2019, the Queensland Government introduced the *Queensland Human Rights Act*⁶ with similar clauses allowing the State to avoid prosecution and liabilities for any breaches or offence against the *Act*⁷. This Government in particular, the Labor Government seems deeply committed to avoiding any responsibility in general recently introducing a *Strengthening Community Bill*⁸ without sufficient community consultation. This Bill also provided for the suspension of the *Queensland Human Rights Act*⁹ due to the many provisions within the proposed Bill in breach of the human rights of children.



I do not wish to discuss further, these proceedings but do mention them only as they are relevant to the current circumstances. What I have highlighted here is the Queensland Governments reluctance to accept responsibility for its citizens.

Lawyers on behalf of the Australian Labor Party (State of Queensland) rely on the High Court decision¹¹ in 1934 that the Courts will not interfere with matters involving political parties and/or are of a political nature. My argument aims to overturn this historic decision as quite simply, times have changed. If anyone, individual or organisation does the wrong thing, they should be held accountable.

Conclusion

It is my overall submission to this committee that it should recommend a rewording of the highlighted clauses to make accountable to Queensland Government and applicable to all in Queensland.

I don't need to go back through the history or Australian governments and our relations with first nations people highlighting the absolute lack of accountability, again, I will leave that for the first nations people but I do expect the government, if it shall be sincere in its wishes to enter into any treaty, that it expresses this intention more clearly in this Bill.

Without accountability there is no law. And in the words of Martin Luther King Jnr "*Injustice anywhere, is a threat to justice everywhere*". Avoiding any responsibility would be an absolute injustice against our beloved first nations people.

Regards,

Shane Cuthbert

⁶ *Queensland Human Rights Act* (Qld) 2019

⁷ *ibid*

⁸ *Strengthening Community Safety Bill* (Qld) 2023

⁹ *Queensland Human Rights Act* (Qld) 2019

¹⁰ *Cuthbert v Abbott* (2022) QSC 113

¹¹ *Cameron v Hogan* (1934) 51 CLR 358

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