

Path to Treaty Bill 2023

Submission No:	19
Submitted by:	Gur A Baradharaw Kod (GBK)
Publication:	
Attachments:	
Submitter Comments:	



*Keriba Gesep; Ngalpun Mabaygal; Yumi Time
Our Homeland; Our People; Our Time*

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

Email: cssc@parliament.qld.gov.au

Dear Secretary

Our organisation Gur A Baradharaw Kod ("GBK") Torres Strait Sea and Land Council, herewith submits our submission to the Inquiry of the Parliamentary Community Support and Services Committee into the Path to Treaty Bill 2023.

Our organisation is a relatively large entity in the Torres and Endeavour Straits of Queensland. In Australia there are two distinct First Nations peoples, Aboriginal peoples and Torres Strait Islander peoples. The Torres and Endeavour region includes both Torres Strait and Aboriginal polities that have continued connection to the seas and lands of the region spanning thousands of years.

GBK is an organisational entity built to support Traditional Owners, the peoples of the Torres and Endeavours Straits, including their descendants, to protect their interests and enjoy their rights through a greater degree of autonomy. GBK believes this can be achieved through the design and management of contemporary governance systems and processes to effectively engage with State governance systems in the twenty-first century.

GBK is uniquely placed to provide governance insights on traditional and contemporary governance matters faced by corporations, leaders and various practitioners in the region. We value and are interested in this policy and the legislative intention to ultimately achieve a changed relationship between Torres Strait Islander polities, Aboriginal polities and the State, striving for a relationship that reflects a mutual respect for each other's right to autonomy albeit through different concepts of sovereignty.

We are committed to working with the State to resolve the longstanding matter of our two sovereignties enduring within one jurisdiction. We look forward to further engagement with this policy formulation and associated legal amendments. Our submission is attached.

Yours sincerely



Ned David
Chairperson

Gur A Baradharaw Kod (“GBK”) Torres Strait Sea and Land Council Submission to the Community Support and Services Committee

About GBK

Gur A Baradharaw Kod (“GBK”) Torres Strait Sea and Land Council Torres Strait Islander Corporation ICN 7689 was established in 2012. GBK is a peak body providing an umbrella function for all Registered Native Title Bodies Corporates (“PBCs”) in the Torres and Endeavour Straits. GBK is the region’s sea and land council. GBK and the PBC member organisations are recognised under the *Aboriginal Cultural Heritage Act 2003* or the *Torres Strait Islander Cultural Heritage Act 2003* (**‘the Acts’**).

GBK is not a PBC, it operates like a Native Title Representative Body (NTRB). In 2022 the function of NTRB for the region was transferred to GBK from the Torres Strait Regional Authority (TSRA), a commonwealth entity that has operated in the region since 1994. Advocacy for the NTRB function to be transferred from TSRA to GBK began in the early years of its establishment (see TSRA Submission to the Indigenous Expert Working Group, COAG Investigation into Indigenous Land Administration and Use, 2015¹).

“Across the Torres and Endeavour Straits, the Federal Court of Australia has made 28 native title determinations. Combined, these determination areas cover a total of 99 islands, inlets cays and sea country, including 15 inhabited islands – with the court recognising exclusive native title rights and interests over 14 islands and non-exclusive native title over Horn Island – and about 44,000km² of non-exclusive native title rights over sea country. Our native title rights and interests recognised that our society has existed since time immemorial governed by our laws and customs unique to us. Those laws and customs govern our daily life and the use and ownership of land and waters of our communities.”²

The political geography of the Torres and Endeavour Straits span five regions, they include:

1. Top Western Islands - Guda Maluligal
2. Western Islands - Maluligal Nation
3. Central Islands - Kulkalgal Nation
4. Eastern Islands - Kemer Kemer Meriam Nation
5. Inner Islands - Kaiwalagal Kaurareg Aboriginal Nation

GBK works with member PBCs to fulfil their responsibilities in local governance particularly in relation to sea and land management, economic development and associated socio-economic issues experienced by Torres Strait Islanders living in the region.

¹ Torres Strait Regional Authority (2015) Submission to Expert Indigenous Working Group - COAG Investigation into Indigenous Land Administration and Use. Canberra. Access via: [https://www.niaa.gov.au/sites/default/files/public-submissions/coag-land/Torres Strait Regional Authority-11-Jun-2015.pdf](https://www.niaa.gov.au/sites/default/files/public-submissions/coag-land/Torres%20Strait%20Regional%20Authority-11-Jun-2015.pdf)

² Source: GBK’s website <https://www.gbk.org.au> , access further information via this link.

Comments on the Path to Treaty Bill

1. GBK is deeply concerned about the lack of consultation with Torres Strait Islander organisational entities in the region and on the mainland of Australia. We appreciate that there was a small community meeting held on Thursday Island in 2019 as part of the Treaty Working Group's consultations and some adhoc dialogue between members of the Working Group and various leaders in the region however there has not been an opportunity prior to the drafting of The Bill, for the Queensland State government to engage Torres Strait and Aboriginal leaders from organisational entities in such an important Bill that aims to remedy historical wrongdoing by past State governments.
2. Throughout The Bill references are made to Torres Strait Islander peoples and Aboriginal peoples acknowledging that these two groups (that received these titles from colonial powers) constitute two distinct cultural groups of people. However, there is no indication that this will be accounted for in the structural design of the Treaty Institute and governance arrangements that ensure local and regional representatives will be decided by existing entities such as GBK. GBK bridges the divide between contemporary and culturally responsive governance among and between Indigenous polities and State governance systems.
3. In the broader governance environment, The Treaty Institute will not be perfectly placed to do this work of bridging the governance divide at the local level and nor does it need to be. Entities such as GBK are perfectly placed to do this work as it is our core business. To be clear we are not advocating for all NTRBs to be considered the same, we understand that there are various entities doing this work across regions throughout Queensland, including both incorporated and unincorporated entities. We expect that the Treaty Institute will not consult with us as is stated in The Bill but rather it will engage with us and have a substantive relationship with us over the long term.
4. We urge the State government not to rush into creating legislation and instead commit to a substantive co-design process at this stage of the process with both Torres Strait Islander and Aboriginal organisational entities that specifically focus on the protection and advocacy of Indigenous rights and interests to seas and lands to build trust from the outset. This will also build confidence that what is operationalised after the legislation is passed is functional and responsive to the capacity building work that needs to be done by both the government and Torres Strait polities and Aboriginal polities in preparation to sit at the 'Treaty-making table' in good faith.
5. Whilst the principles outlined in The Bill express an aspiration to 'change' the relationship between Torres Strait Islander polities and Aboriginal polities, we consider the translation of the principles into the structural approach lacking evidence of a changed relationship throughout The Bill. Our greatest concern is the vagueness and even absence of working in a different way from the past through a power sharing model that convinces us that

representation of our authority structures in local and regional decision-making processes on the distribution of resources will not be enacted. We appreciate that this is the first time that the Queensland government has attempted to change the relationship however this Bill fails to give us confidence that the relationship will be different from the past.

6. We urge the Queensland government to include provisions for Torres Strait Islander and Aboriginal polities, through engagement with appropriate organisational entities, to have the opportunity and capability to negotiate government programs and services that directly impact on their ability to co-exist and co-govern with the State of Queensland. We expect a minimum standard set by Aotearoa New Zealand that ensures that no area of program or services will be exempt from negotiations in a Treaty-making established in Queensland.
7. We are highly concerned that The Bill does not indicate that Torres Strait Islander polities and Aboriginal polities represented through Native Title entities will be accounted for in the structure of the Treaty Institute. In the Torres and Endeavour Straits, we continue to build our governance capabilities through the Native Title framework. This work has occurred over a period of 30 years and ought to be built on in the pursuit of a Treaty-making framework. We expect, in good faith, that the Treaty Institute will be sufficiently independent from government interests and prioritise engagement with Native Title entities to carry out its functions effectively and efficiently.

Treaty Institute

8. The Bill states that the Minister recommends Aboriginal and/or Torres Strait Islander persons to the Council if satisfied that they are appropriately qualified. For the purpose of transparency, we ask that the Bill makes reference to the required qualifications given that we require a combination of skills, knowledge and experience that reflect a very particular pursuit, one that combines technical skills with necessary social and political capital to enact the responsibilities and functions of a unique Institute for a unique Bill. This is not the same as a Service Delivery entity.
9. The Bill needs to demonstrate a new way of working with Torres Strait polities and Aboriginal polities by conceptualising processes that reflect unique and specific considerations for the pursuit of a Treaty-making framework. Thus, we expect that the composition of the group that advises the Minister should reflect these circumstances.

The Institute Council

10. The Bill is specific about the number of Treaty Council members stating, “the Treaty Institute consists of 10 members”. We are concerned that being so specific here is premature. There is

no indication of the rationale for this number i.e. representing regions throughout the State of Queensland etc.

11. The Bill needs to consider the political geographies of Torres Strait and Aboriginal polities from the outset to build a firm foundation to enable groups to build their Treaty-making capabilities with neighbouring First Nations groups before sitting at the negotiation table with the State. This is a principle that was captured in the Treaty Working Party Report after their 2019 community consultations, a request that came from the community representatives who participated in those consultations.
12. The Preamble of the Bill states that “The colonisation of Queensland occurred without the consent of Aboriginal peoples and Torres Strait Islander peoples and often against their active resistance”. We are not confident that the Bill articulates a governance structure through The Institute Council capable of addressing the need for adequate investment in the work that both polities and communities of Torres Strait and Aboriginal peoples will need to do to be Treaty-ready. We will need resources in addition to the very limited resourcing provided through the Native Title framework to accelerate the work of re-building and designing contemporary governance systems. This work includes knowledge sharing throughout polities and communities to ensure a sufficient capacity to sit at the negotiation table with the State.

Notes on Sovereignty

13. There is a lack of understanding of the two concepts of sovereignty that exist in the jurisdiction now known as the nation-state of Australia. There needs to be substantive engagement between representatives of traditional owners and political leadership from the State to settle our shared understanding of each other's claim to Sovereignty over the continent.
14. This path to treaty-making needs to start from a firm position, a position that transcends Clause 4 in the Preamble of the Bill, “Aboriginal peoples and Torres Strait Islander peoples assert they have never ceded their sovereignty over their lands, seas, waters, air and resources and they continue to assert their sovereignty”. Rather it needs to state that Aboriginal peoples and Torres Strait peoples have never ceded sovereignty over their lands, seas, waters, air and resources and they continue to enact their sovereignty”.
15. There needs to be a response from the State acknowledging the invasion of these lands and waters and a commitment to changing this relationship that continues to be characterised by domination and denial.
16. We acknowledge that the Bill outlines a Truth-telling and Healing Inquiry, that appears to be quite resource intensive. Do we need to make that kind of investment if the State will remain unwilling to delete the word “assert” from clause 4 in the preamble? Our concern is that the resources allocated to the Truth-telling and Healing Inquiry will divert funds away from the preparation work that Torres Strait polities and Aboriginal polities need to do to become Treaty-ready.

Summary

In summary we urge the government not to rush into creating legislation and consider a co-design process before the drafting of legislation. This will increase the chance of the legislation being responsive to both parties at the Treaty-making table. This will also build a level of trust that is not currently there among Aboriginal and Torres Strait Islander polities and communities. There are numerous consultation reports that reflect this very real absence of trust in the State. It is an imperative that the resources managed by the Treaty Institute are invested in communities and their capacity building needs for negotiating treaties. This legislative pursuit needs to articulate a willingness to share power. This is an opportunity for this government to really make a mark for their generation and create a turning point in the relationship between Torres Strait polities, Aboriginal polities and the State since the establishment of the nation-state of Australia.