

Path to Treaty Bill 2023

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**INTERIM TRUTH
AND TREATY BODY**

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Dear Committee Secretary

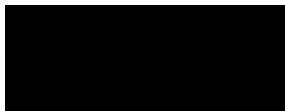
Re: Path to Treaty Bill 2023

The Interim Truth and Treaty Body (ITTb) welcomes the opportunity to make a submission to the Community Support and Services Parliamentary Committee on the Path to Treaty Bill 2023.

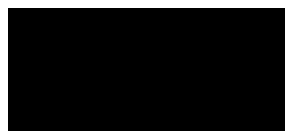
Please see attached to this letter the ITTB submission on the Path to Treaty Bill 2023.

Please contact Professor Michael Lavarch AO by email at secretariat@iib.qld.gov.au if you require more information.

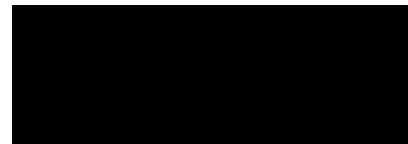
Yours sincerely



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INTERIM TRUTH AND TREATY BODY

**Submission to the
Community Support and Services Parliamentary Committee
on the
Path to Treaty Bill 2023**

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Executive Summary

The Interim Truth and Treaty Body (ITTb) welcomes the opportunity to make this submission to the Committee. The submission provides an overview of the Path to Treaty Bill 2023 (the Bill) and the co-design process undertaken by the ITTB and the government to develop the Bill. The ITTB recommends the passage of the Bill.

The ITTB was formed to continue the momentum towards Treaty in Queensland and was charged with the responsibility to operate prior to the establishment of the First Nations Treaty Institute (the Institute) and the Truth-telling and Healing Inquiry (the Inquiry) as proposed in the Bill. The terms of reference of the ITTB expressly included the role of co-designing the Bill.

The ITTB strongly believes the Bill honours the views of Aboriginal and Torres Strait Islander people, and non-Indigenous Queenslanders consulted in the earlier phases of the Treaty process. The Bill is a faithful embodiment of the recommendations of the Treaty Advancement Committee (TAC).

In this Submission the history of Queensland's Path to Treaty is outlined and the Six 'Phases' of the anticipated Path to Treaty process explained. The Bill falls within Phases Three and Four of the Path to Treaty process.

This is followed by an explanation of the ITTB as the vehicle for taking forward the Path to Treaty in Queensland, and the manner in which co-design of the Bill took place, noting this is the first time that we are aware of, in Queensland's history, that legislative co-design of this nature has been attempted. The strengths and limitations of co-design are briefly canvassed.

The subsequent sections of the Submission detail the rationale for the key sections of the Bill, including the Preamble, the purpose and principles underpinning the Bill, the First Nations Treaty Institute and the Truth-telling and Healing Inquiry.

Much thought has been given to the funding and approach required to implement the structures established by the Bill. The Submission canvasses some important issues regarding the funding of the Institute.

Finally, and importantly, the Submission reflects the aspirations for the highest level of accountability and transparency in the workings of the Institute and the Inquiry, and how this has been built into the Bill's provisions.

Introduction

The Path to Treaty- the journey so far

The Queensland Government commenced the Path to Treaty in 2019, marked by a Statement of Commitment and the announcement of the Tracks to Treaty reform, affirming a commitment to resolve the unfinished business between Aboriginal and Torres Strait Islander Peoples and non-Indigenous Queenslanders.

The Path to Treaty responds to generations of calls from First Nations Peoples in Queensland for a formal agreement - a Treaty or Treaties - which recognises Aboriginal and Torres Strait Islander Peoples as the original owners and carers of their land and waters and delivers substantive outcomes.

Following the Queensland Government commitment in 2019, an extensive community consultation process was conducted across Queensland- delivered by a Treaty Working Group and Eminent Panel. Findings of the consultations across the state found strong support to proceed on a Path to Treaty and identified key areas to action. This included the need for a truth-telling and healing process and building the capacity of First Nations Peoples to equitably participate in a Treaty process. Based on these findings, the Eminent Panel made recommendations to the Queensland Government in February and May 2020.¹ The principal recommendation was for the Queensland Government to proceed on a Path to Treaty with the aim of reaching a treaty or treaties with First Nations Peoples.

In February 2021, the Treaty Advancement Committee (TAC) was established to provide further advice on implementation of the Eminent Panel recommendations and, after further community consultation, in October 2021 the TAC handed their Report to the Queensland Government². A series of recommendations were provided to Government that outlined specific proposals for implementation of the Eminent Panel recommendations, which included:

- establishing a First Nations Treaty Institute (the Institute) as a statutory body governed by a First Nations Treaty Institute Council (Institute Council), with appropriate governance and accountability arrangements, to support First Nations prepare for and participate in Treaty negotiations
- a staged approach to truth-telling, firstly via local truth-telling activities, and secondly by establishing a formal legislative Truth-telling and Healing Inquiry (the Inquiry) for a three-year term to inquire into the historical and ongoing impacts of colonisation on First Nations Peoples and facilitate truth-telling and healing for all Queenslanders
- use of the returns of the Path to Treaty Fund to fund the operations of the Institute once established
- establishing a Path to Treaty Office to lead preparations for Queensland Government engagement in treaty negotiations.

¹ Path to Treaty Working Group, *Report from the Treaty Working Group on Queensland's Path to Treaty*, February 2020, at: <https://www.dsdsatsip.qld.gov.au/resources/dsdsatsip/work/atsip/reform-tracks-treaty/path-treaty/treaty-working-group-report-2020.pdf> [accessed 05/03/2023]; and Path to Treaty Eminent Panel, *Advice and Recommendations from the Eminent Panel on Queensland's Path to Treaty*, February 2020, at: <https://www.dsdsatsip.qld.gov.au/resources/dsdsatsip/work/atsip/reform-tracks-treaty/path-treaty/treaty-eminent-panel-february-2020.pdf> [accessed 05/03/2023] and Path to Treaty Eminent Panel, *Supplementary Advice and Recommendations*, May 2020, at: [Supplementary Eminent Panel advice and recommendations February 2020 \(dsdsatsip.qld.gov.au\)](https://www.dsdsatsip.qld.gov.au/resources/dsdsatsip/work/atsip/reform-tracks-treaty/path-treaty/treaty-eminent-panel-supplementary-advice-and-recommendations-may-2020.pdf) [accessed 16/03/2023]

² Treaty Advancement Committee, *Treaty Advancement Committee Report*, October 2021, at: <https://www.dsdsatsip.qld.gov.au/resources/dsdsatsip/work/atsip/reform-tracks-treaty/path-treaty/treaty-advancement-committee-report.pdf> [accessed 05/03/2023]

The TAC also recommended that, prior to the establishment of the Institute and Inquiry, a short-term Independent Interim Body be put in place to undertake pre-Institute research and engagement, lead local truth-telling activities and co-design the arrangements for the Institute and the Inquiry with the Queensland Government.

The Queensland Government response to the TAC report accepted in full 18 of the 22 recommendations, including those to be co-designed with the Independent Interim Body, with the following four recommendations accepted-in-principle:

- recommendation 2 (legislation preamble) as further advice will be required on the drafting of the Bill
- recommendation 7 (future Institute Council selection arrangements) as this is dependent on policy developments in relation to First Nations representative structures
- recommendations 17 and 20 (Institute funding arrangements) based on Queensland Treasury advice that a review of the operation of the fund is required and that allocations will be made to the Institute in \$10 million amounts per year.

The Phased Approach to the Path to Treaty

The Path to Treaty can be conceptualised as involving several phases. Phase One commenced the conversation and involved wide community consultation on the threshold question of whether Queensland should embark on the Path to Treaty and if so, what were the high-level aspirations of First Nations Peoples and the wider community for a treaty process. Phase One culminated with the reports of the Treaty Working Group and Eminent Panel.

Phase Two advanced the Path to Treaty through the work of the TAC developing the model of the structures to support First Nations communities' participation in treaty-making and the conduct of the formal Inquiry. It was this period when the government made a substantial commitment to the treaty process through establishing the Path to Treaty Fund.

Phase Three represents the current status of the treaty and truth processes. The TAC recommendations have been acted upon through the:

- creation of the Independent Interim Body (the Interim Truth and Treaty Body)
- the establishment of the Path to Treaty Office within government
- the co-design of the Path to Treaty Bill
- the introduction of the Bill to Parliament
- preparations for local truth-telling.

Phase Four will be the establishment and commencement of the Institute and Inquiry. This phase involves Parliament's consideration of the Bill and (assuming the Bill's passage), operationalising the Institute and Inquiry. This phase is when the formal Inquiry begins its work, and the Institute commences its functions.

Phase Five will involve the development between the Institute and the government of the further architecture required for treaty negotiations and treaty-making namely:

- the joint development of the treaty-making framework which details the ground rules for negotiations and the legal enforceability of treaties
- the creation of the intermediary structure between the State and First Nation negotiation counterparties i.e. the treaty commission or tribunal to co-ordinate negotiations and deal with issues of dispute resolution.

Phase Six will involve actual treaty negotiations and the implementation of the recommendations flowing from the Truth-telling and Healing Inquiry. By this time the Institute would have progressed beyond its two year inaugural period as prescribed within the Bill.

About the Interim Truth and Treaty Body

In response to the recommendations provided by the TAC in 2021³, the Independent Interim Body (IIB) was established by the Minister for Seniors and Disability Services and the Minister for Aboriginal and Torres Strait Islander Partnerships (the Minister) and announced by the Premier on 16 August 2022.

The IIB, which consists of 10 members, have since renamed the body the *Interim Truth and Treaty Body* (ITTB) to articulate its role more clearly to progress treaty-making and truth-telling in Queensland.

The ITTB will remain in operation until the Institute is established and operating. It hence exists for Phase Three and the beginning of Phase Four when its work is transferred largely into the Institute.

In accordance with the Terms of Reference set by the Minister, the role of the ITTB is to:

- maintain momentum of the Path to Treaty reforms in Queensland while legislation to establish the Treaty Institute (Institute) and Truth-telling and Healing Inquiry (Inquiry) is progressed through the Queensland Parliament
- design and deliver local-level truth-telling activities with Queensland public institutions of memory and story, including art galleries, museums, libraries, and archives
- co-design the Institute and Inquiry with the Path to Treaty Office (PTTO)⁴ located within the Department of Seniors, Disability Services and Aboriginal and Torres (the Department)
- undertake research and community engagement
- report to the Minister for Aboriginal and Torres Strait Islander Partnerships on progress.

Reporting to the Minister is primarily through a Ministerial Consultative Committee – set up to guide the progress of the Path to Treaty reform, including guiding the development, implementation, and monitoring of the Path to Treaty reform.

What is co-design and how did it work?

A key function given to the ITTB in its terms of reference, as outlined above, was the 'co-design of the Institute and the Inquiry with the PTTO'.

The co-design process can be described as a participatory approach to legislative design in which the ITTB members were treated as equal collaborators with the Department's legal officers and the Office of Parliamentary Counsel in the drafting of the Path to Treaty Bill (the Bill).

'Collaboration' regarding the drafting of the Bill did have a number of genuine features, through which the ITTB was able to meaningfully contribute to draft exposures of the Bill and, therefore, the design of the Institute and Inquiry. There were, however, notable limitations to the 'equal collaboration' approach that is both inherent in a legislative process and particular to the circumstances of the Bill's development.

Recalling that the TAC Report had been handed to the Queensland Government in October 2021, an initial and partial draft of the Bill had already been developed- prior to the co-design process with the ITTB commencing. The ITTB were of the view that these initial drafts reflected the Queensland Government's response to the TAC Report and its recommendations.

³ Queensland Government, *Queensland Government Response to the Treaty Advancement Committee Report*, 2022, at: <https://www.dsdsatsip.qld.gov.au/resources/dsdsatsip/work/atsip/reform-tracks-treaty/path-treaty/ptt-response-tac-report.pdf> [accessed 05/03/2023]

⁴ The Path to Treaty Office is located within the Queensland Government Department of Seniors, Disability Services, and Aboriginal and Torres Strait Islander Partnerships (the Department)

As a result, the co-design process commenced following announcement of the ITTB on 16 August 2022 and continued until the Bill and supporting Explanatory Notes were submitted to Cabinet for approval. It was during this period that the ITTB had extensive and intensive engagement in the drafting of the Bill including with Departmental legal officers and Parliamentary Counsel.

The ITTB established a Legal Advisory Committee as an internal structure to support and lead the co-design process on behalf of the ITTB Board.

Activities of co-design included:

- several briefings by the Department's legal officers and Parliamentary Counsel at a number of ITTB Board meetings
- regular meetings and discussions between the ITTB Legal Advisory Committee and Department legal officers and Parliamentary Counsel on policy and drafting issues, sometimes meetings occurring three times a week
- off-line review of drafts of the Bill or individual clauses by ITTB sub-committee members
- regular updates to the full ITTB from the Committee on the progress of the drafting and key policy issues emerging with the ITTB giving direction on policy issues
- attendance at a meeting of the Ministerial Consultative Committee to brief on the status of the Bill from the perspective of the ITTB
- attendance at the Government Treaty Readiness Committee (an internal government structure) to brief on the status of the Bill from the perspective of the ITTB.

The Bill and Explanatory Notes was formally approved at an ITTB meeting prior to their submission to Cabinet for consideration.

Ultimately some 40 versions of the Bill were created during the three-month process of co-design between the ITTB and government officers (noting the differences between versions were sometimes nothing more than very minor cleaning up of some drafting points).

Taken as a whole, the co-design process to develop the Bill did afford the ITTB a genuine opportunity to shape the Bill and the structure of the Institute and the operation of the Inquiry.

Strengths and limitations of the co-design process

The starting point for the Bill was the acceptance or acceptance-in-principle by the government of the recommendations of firstly the Eminent Panel in August 2020⁵, and then the Treaty Advancement Committee in August 2022⁶. As outlined earlier, these processes considered in detail how the treaty and truth processes should be advanced - in particular the legislative basis for both processes. This means the drafting instructions for the Bill were drawn from these reports that had been developed with the benefit of input from First Nations communities.

The government had accepted and acted upon the creation of the ITTB as recommended by the TAC. This meant there was a body to be a co-design collaborator in the development of the Bill. Equally, the ITTB was confident throughout the drafting process that the government and Department did intend that the ITTB would have an influential role in shaping the Bill and the Institute and Inquiry to be established by the Bill.

⁵Queensland Government, Queensland Government Statement of Commitment and response to the recommendations of the Eminent Panel, August 2020, [Queensland Government statement of commitment and response August 2020 \(dsdsatsip.qld.gov.au\)](https://www.qld.gov.au/commitment-and-response-august-2020) [accessed on 05/03/2023]

⁶Queensland Government, Queensland Government response to the Treaty Advancement Committee recommendations, August 2022 [Queensland Government statement of commitment and response August 2020 \(dsdsatsip.qld.gov.au\)](https://www.qld.gov.au/commitment-and-response-august-2022) [accessed on 05/03/2023]

Further, at an individual level, the Department's legal policy officers and Parliamentary Counsel assigned to the project were responsive and helpful in discussions with the ITTB and approached the task by trying to accommodate policy aspirations expressed by the ITTB. However, this was not always possible given the protocols and practices in developing Queensland legislation.

There were clear limitations in the co-design process. Firstly, and fundamentally, any legislation enacted by the Queensland Parliament is the exercise of power by the negotiation counterparty to First Nations peoples in future treaties. It is inherent, even with goodwill and good intentions, that there will always be a considerable power imbalance between the State and First Nations Peoples. The government, its agencies and its employees will develop legislative proposals by the rules and practices set by the government.

In short, Rule 1 is that the State holds the power and lays out the processes that must be followed. Rule 2, is that First Nations Peoples in a colonial and post-colonial State, will not change Rule 1.

Beyond this fundamental point, the co-design process was impacted by the following factors:

- as the drafting of legislation is an internal process of government and is subject to confidentiality obligations, ITTB members were not permitted to disclose copies of the Bill to third parties and no consultation with First Nations communities on the Bill was possible
- the timeframe for the co-design process was set by the government and it ran for approximately three months
- the ITTB was in its establishment phase during the co-design period and its resourcing was limited. This placed the onus very much on the individual expertise and experience of ITTB members to engage with Departmental legal officers and Parliamentary Counsel and provide both policy input as well as drafting input.

While the above factors were limitations, it should be clearly noted that the broad sweep of policy issues that shape the Bill in relation to the Institute and the Inquiry were developed in the earlier phases of the treaty process. The Bill translates the policy positions in the TAC Report into legislative expression and hence while recognising the limitations, in the view of the ITTB it is appropriate for the Bill to be enacted.

Key features of the 'Path to Treaty Bill 2023' and why they matter

Preamble

While legislative preambles never form 'operative provisions' of a Bill, the preamble is the bedrock for understanding the Bill. It is legislative recognition of colonisation, and the ongoing impacts of disempowerment, dispossession and trauma; the necessary predicates to "redressing the past failures and injustices to bring hope, a better future, and a more just relationship between First Nations Peoples and the Queensland Government."⁷

This foundational context, and the rationale for truth and treaty as the 'mechanisms' for learning from and addressing past wrongs, become the indispensable foreground to the operative provisions that follow.

The preamble itself speaks truth. The first part (paragraphs one through six) set the historical facts: more than sixty millennia over which Aboriginal and Torres Strait Islander Peoples governed their land, and the dispossession and disempowerment of the same peoples by the harmful acts of colonisation. It goes on to recognise that all Queenslanders have a right to know the past, and to understand how it affects everything we witness and experience today.

⁷ Treaty Working Group, *Report from the Treaty Working Group Report*, February 2020, pg. 41
<https://www.dsdsatsip.qld.gov.au/resources/dsdsatsip/work/atsip/reform-tracks-treaty/path-treaty/treaty-working-group-report-2020.pdf> [accessed 05/03/2023]

The second part of the preamble (paragraphs 7 through 10) harness the voice of Queenslanders, heard through the last four years of formal engagement on the Path to Treaty; dating from the Reparations Taskforce, followed by the Treaty Working Group, the Eminent Panel and then the Treaty Advancement Committee (TAC).

This is the first time these matters have been recognised in legislation. The preamble is landmark not least because it marks ‘the maturity of Queensland to deal honestly with its history and provide the foundation for a path forward’.⁸

The TAC originally proposed legislative acknowledgement of seven principles within the Preamble (recommendation 2), however the ITTB structured the Preamble in the manner above, to bolster recognition of the diversity of Aboriginal peoples and Torres Strait Islander peoples in Queensland, to account for the impacts of colonisation that exist today in all their forms, and to describe the relationship we need to have with each other if truth and treaty are to help heal the trauma suffered by Aboriginal and Torres Strait Islander people.

Great care has been taken with the wording of the preamble, to honour the truth of our history, and ensure integrity is given to all we have heard from Queenslanders during the earlier consultation phases of the path to treaty.

Purpose and Principles – Part 1, Clauses 5 and 6 of the Bill

Emerging from the widespread engagement with Queenslanders undertaken by the Treaty Working Group and the Eminent Panel, their conclusions reflected on the best way to give life to Queensland communities desire to deal with the ‘unfinished business’ of the basis and consequences of the colonisation of Queensland, and its devastating ongoing impact on First Nations peoples.

The Institute was determined, in an earlier form, by the Treaty Working Group and the Eminent Panel as the most effective structure to support First Nations Peoples prepare for and then participate in treaty negotiations. The TAC reaffirmed and refined this view, but based on further examination of options and particularly the emerging experience in Victoria that the pivotal process of truth-telling and healing, required a separate structure from the Institute.

For this reason, the Bill contains a *dual* purpose (Cl 5); to establish the Institute, *and* to separately establish a Truth-telling and Healing Inquiry (the Inquiry).

The Inquiry was conceived as a separate process (and entity) from that of the work of the Institute. The Institute’s prime focus is the support of First Nation communities and their participation in treaty-making. The Inquiry has a different remit, while focused on the experiences of First Nations Peoples, it will engage with the wider Queensland community and will require very different powers than the Institute.

The principles for administering the Bill are centred on the right of First Nations Peoples to make decisions about their own lives, communities, and futures. Centring self-determination is key for framing legislative administration because it recognises that Aboriginal and Torres Strait Islander Peoples themselves are best placed to make decisions that reflect their own needs, aspirations, and perspectives. This is reinforced by the need to identify and understand Aboriginal law, Aboriginal tradition and Torres Strait Islander law and Ailan Kastom, so that it can be protected in the process (as per Cl 6(2)(c)).

Clause 6(2) specifically brings to life the key tenets of the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration). While it calls out the importance of self-determination and

⁸ Treaty Advancement Committee, *Treaty Advancement Committee Report*, October 2021, pg. 1
<https://www.dsdsatsip.qld.gov.au/resources/dsdsatsip/work/atsip/reform-tracks-treaty/path-treaty/treaty-advancement-committee-report.pdf> [accessed 05/03/2023]

free, prior and informed consent as part of negotiations and making a treaty; it also embraces other principles such as fairness and equality, good faith negotiations, mutual benefit and sustainability, transparency and accountability.

Essentially, this clause gives legislative recognition of Queensland's obligations under the UN Declaration with respect to treaty-making. This is an important commitment by the Queensland Government in how it will act in relation to First Nations Peoples. Australian history is sadly replete with examples of governments making statements of high-minded policy intent regarding First Nations Peoples, only for those sentiments to wither away in terms of actions.

Lived experience strongly indicates that the path to treaty will also be accompanied by actions of government in other critical areas impacting on First Nations Peoples that will be inconsistent with the ambition of a reframed and equitable relationship. By centring First Nations rights and interests based on the UN Declaration, a benchmark is created against which government actions can be assessed. It places an obligation on government to build its capacity to realign to new ways of working with Aboriginal and Torres Strait Islander Peoples.

Key features of the Institute – Part 2 of the Bill

Part 2 of the Bill dealing with the Institute has been underpinned by the principle that '[t]he right to negotiate treaties rests primarily with First Nations groups in reflection of their distinct rights and needs.'⁹ The scope of what a treaty will be, the ground rules for negotiation and how it will be enforced, will be the remit of the Treaty-making Framework, developed by the Institute with the State. That said, it is anticipated that treaties will adapt the three criteria identified in literature, as articulated by the TAC, that is¹⁰:

- recognition that First Nations peoples were the original owners of the land, and endured injustices as a result of ongoing processes of colonisation
- the coming together of First Nations Peoples and government through a process of negotiation and agreement
- substantive social justice outcomes for First Nations peoples.

The Institute's principal function is to support and empower First Nation Peoples to prepare for and then participate in treaty negotiations with the State. As a necessary pre-requisite for treaty-making, the Institute also takes the lead with First Nations Peoples in developing, in consultation with government, the Treaty Making Framework.

In order to carry out this and the related functions assigned to the Institute by the Bill, the scheme created for the Institute reflects the following key features:

- the Institute is a statutory body under Queensland law but unlike other statutory bodies, it does not represent the State. This independence from government is further reinforced by clause 18 that provides that the Institute Council must act independently in the public interest having particular regard to the interests of First Nations Peoples.
- the Institute Council will be composed of statutorily appointed Aboriginal and Torres Strait Islander members. The selection process for ongoing Institute Council members (i.e. members appointed after the inaugural period) will be recommended by the Institute Council (appointed for the inaugural period).
- the Institute will not be a party to a Treaty. Rather it is tasked with supporting First Nations to make treaties with the government. Feedback from community consultation and examination of treaty processes around the world suggest that rather than a

⁹ Treaty Advancement Committee, *Treaty Advancement Committee Report, October 2021*, pg. 16. [Treaty Advancement Committee Report October 2021 \(dssdsatsip.qld.gov.au\)](https://dssdsatsip.qld.gov.au) [last accessed 5/03/2023]

¹⁰ Brennan, S, Behrendt L, Strelein L and Williams, G, *Treaty*, The Federation Press Sydney, 2005, pg. 94

- singular treaty, multiple treaties might emerge whether over a particular land or sea location, or relating to a particular group of Aboriginal or Torres Strait Islander Peoples. building the capacity of Aboriginal and Torres Strait Islander communities to be 'treaty-ready', and negotiate with government, is a fundamental Institute responsibility. This will take several forms including direct engagement with First Nations communities and their representative structures, research and preparation of template materials.

The Institute can have a role in local truth-telling as stated in clause 13 (d), where support to a First Nations community to record the impacts of colonisation might inform participation in treaty negotiations.

The Bill provides for a robust system of accountability to the Institute and how it operates and expends funds. These measures are detailed at a later section of this submission.

Key features of the Inquiry – Part 3 of the Bill

“Truth-telling is a method used to support a nation to transition from old ‘dishonourable’ ways to new ways of working together that are honourable and just. This is primarily through chronicling the truths of the past and the lived experiences of the survivors of injustices.”¹¹

Both Queensland non-Indigenous and First Nations Peoples have expressed during the earlier phases of the Path to Treaty process their distress that the voices and experiences of Aboriginal and Torres Strait Islander Peoples have been silenced, suppressed, and ignored for too long. Truth-telling is a crucial step towards acknowledging the stark and harsh reality of colonisation in Queensland, including the dispossession and displacement of First Nations Peoples from their lands, the forced removal of children and cultural genocide through the destruction of language, law and cultural practice; and that ongoing systemic racism is an everyday experience for many First Nations Peoples.

As one non-Indigenous participant said in 2019 (during the Treaty Working Group and Eminent Panel consultations):

*“We done the wrong thing by this mob. This is part of the truth-telling—need to understand and right some of the wrongs of the past and move on.”*¹²

Healing is paramount in addressing the intergenerational trauma experienced by the truth of colonisation. This trauma has had devastating impacts on individuals, families, and communities. This is why truth-telling is such a fundamental of treaty-making; because it is only when First Nations Peoples are heard, that healing can begin.

In summarising what First Nations Peoples have long articulated, but in particular over the course of the path to treaty journey, it is the ITTB’s understanding of the key message to be:

“Listen to us, walk with us, accept what has happened, and then by drawing on the collective empathy of all Queenslanders, we can start to heal the legacy of the past together, safely.”

These principles underpinned the establishment of the Inquiry and its functions under CI 66, and framed the mandate for the Inquiry to be delivered in a trauma-informed and trauma responsive way (CI 72).

Why was the model of a bespoke Inquiry chosen to conduct formal truth-telling and healing? The TAC’s examination of the options in relation to truth-telling established, based on both domestic

¹¹ Treaty Advancement Committee, *Treaty Advancement Committee Report, October 2021*, pg. 28. [Treaty Advancement Committee Report October 2021 \(dsdsatsip.qld.gov.au\)](https://dsdsatsip.qld.gov.au) [last accessed 5/03/2023]

¹² Treaty Working Group, *Report of the Treaty Working Group, February 2020*, pg. 56 [Report from the Treaty Working Group on Queensland's Path to Treaty, February 2020. \(nla.gov.au\)](https://nla.gov.au) [last accessed 5/03/2023]

and international experience, suggested that an independent body within an Inquiry style model would be most effective. That said, a Royal Commission or Commission of Inquiry was not really appropriate in terms of its highly legalistic framework and operating procedures that were far removed from First Nations cultural practice. The ITTB was mindful of the cautions from the Yoorrook Justice Commission in Victoria, which noted the ‘unique challenge [where] every step required an evaluation of the cultural appropriateness of how a Royal Commission ‘ordinarily’ operates’¹³.

Accordingly, the ITTB intends an Inquiry structure that permits a more flexible format and basic operating style than that typically associated with a Royal Commission. The Bill provides that the Inquiry has three core functions:

- To conduct inquiries into and document the impact of colonisation on First Nations Peoples
- To conduct research into and promote community awareness of the impact and effects of colonisation including on the general public’s shared understanding of the history of Queensland
- To undertake any other functions stated in the Inquiry’s term of reference.

The Inquiry’s basic methods to carry out its functions will be truth-telling sessions, truth-telling hearings and seeking the supply of documents and other materials. It will commission and produce research papers. In hearing from participants, the Inquiry must observe natural justice and critically operate in a culturally appropriate manner. This legislative framework will be built upon by guidelines made pursuant to clause 72 (2).

Combined this will enable the Inquiry to be tailored to individual circumstances making it conducive to everyone sharing their stories of the hidden, and often destructive consequences of colonisation.

Embracing trauma-informed practice, and the non-negotiable principle of ‘do no harm’, it was considered that flexible options to interact with the Inquiry would assist people who are disadvantaged or reluctant to engage in an adversarial style system (that traditionally involve legal-style questioning) to feel safe to come forward to share their stories. Equally, the Inquiry will operate across Queensland and in a range of settings to help people and First Nations people in particular feel comfortable and culturally safe to participate.

The basic assumption is that engagement with the Inquiry will be voluntary. The exception to this is that government and government agencies will be compelled to produce documents (or other things) and appear at the Inquiry. Clauses 79 to 81 give effect to this.

The TAC report recommended the Inquiry to have a three-year term. A defined timeframe for a truth-telling process of three years based on international best practice appeared to be optimal to provide sufficient time for the Queensland Government to access existing work and research to support chronicling the colonisation of Queensland. This is reflected in clause 64 of the Bill. However, clause 64(3) also provides for the ability to extend the term of the Inquiry, if required.

It was always anticipated that a key aspect of truth-telling will be the sharing of the outcomes with education systems, such as the school system, so that young people of Queensland (and indeed all Queenslanders) will gain a critical and complete understanding of the State’s history. A shared understanding of First Nations Peoples experience of colonisation will assist all Queenslanders provide context to the continuing disadvantage experienced by Aboriginal and Torres Strait Islander Peoples as a result of colonisation, compared to the non-Indigenous community.¹⁴

¹³ Yoorrook Justice Commission, *Yoorrook with Purpose, Interim Report 2022*, pg. 15 [Yoorrook-Justice-Commission-Interim-Report.pdf \(yoorrookjusticecommission.org.au\)](https://yoorrookjusticecommission.org.au/interim-report.pdf) [last accessed 5/03/2023]

¹⁴ Treaty Advancement Committee, *Treaty Advancement Committee Report, October 2021*, p29. [Treaty Advancement Committee Report October 2021 \(dsdsatsip.qld.gov.au\)](https://dsdsatsip.qld.gov.au/treaty-advancement-committee-report-october-2021) [last accessed 5/03/2023]

Review of the legislation (cl 94)

It is a modern convention that Queensland legislation has an in-built review period, however as articulated by Recommendation 11 of the TAC, the need is all the more important in this instance. The Bill is breaking new ground and it is therefore critical to ensure that after five (5) years, it has performed to its aspirations without causing unintended consequence. In particular, cl 94 gives effect to the need to “evaluate whether the legislation is generally enabling progress on the Path to Treaty; the Governance of the Institute; and, the operations of the Institute in carrying out its functions, including the management of the Path to Treaty Fund.”¹⁵

Institute and Inquiry - consultation and operationalisation

The Bill, as outlined above, clearly provides the necessary architecture to advance the Queensland treaty process and to conduct the formal Inquiry. It will however, not be the end of the requirement for further treaty structures – nor does the Bill answer every question as to how the Institute and Inquiry are to operate. This section highlights and discusses the areas requiring further development in consultation with First Nations Peoples and the wider Queensland community.

In working with the Department’s legal officers and Parliamentary Counsel to co-design the Bill, the ITTB was conscious of both the limits of its own mandate and the inherent constraints of co-design. The ITTB believed it could act consistently with the recommendations and rationale contained within the reports of the Treaty Working Group, Eminent Panel and the TAC. The process leading to these reports involved consultation with First Nations communities, key experts and stakeholders, including the work of other consultations such as the constitutional dialogues that informed the Uluru Statement from the Heart (the Uluru Statement).

Accordingly, the structures proposed to be created in the Bill accurately reflect the TAC recommendations. As mentioned earlier, there were limitations on the co-design process for the Bill including the requirement that co-design was subject to confidentiality obligations placed on members of the ITTB. As result, the ITTB prior to the introduction of the Bill to Parliament was unable to undertake further consultation with First Nations communities or the wider community.

Given these limitations, the ITTB believes there are three (3) principal areas where further consultation is required before the Institute and Inquiry can become operational. These are:

- the selection process for members of the Institute Council for the inaugural period
- the selection process for the members conducting the Inquiry
- the Inquiry Terms of Reference.

Accordingly, these elements are not contained in the Bill, in order to allow further consultation and input by First Nations Peoples.

Over the coming months, the ITTB will embark on an extensive engagement and consultation process with First Nations communities and the wider community. The aim will be to explain and contextualise the Bill, the Institute and the Inquiry and to develop proposals for the Minister on the governance of the Institute and Inquiry and the Inquiry's Terms of Reference.

These three areas requiring further consultation are briefly canvassed below.

The Institute- governance and the appointment of the Institute Council

The Institute Council governs the Institute. There are 10 Council members who are appointed by the Governor in Council on the recommendation of the Minister. A member must be an Aboriginal person or Torres Strait Islander person and other eligibility requirements are prescribed by the Bill.

¹⁵ Treaty Advancement Committee, *Treaty Advancement Committee Report, October 2021*, p.26. [Treaty Advancement Committee Report October 2021 \(dsdsatsip.qld.gov.au\)](https://www.dsdsatsip.qld.gov.au) [last accessed 5/03/2023]

The scheme of the Bill creates two periods for the Council, namely the 'inaugural period' that runs for two (2) years from the date the Institute is established and then the ongoing period after the conclusion of the inaugural period.

The TAC Report clearly outlines that the governance of the Institute is to be in the hands of those individuals who have been chosen to represent and have the support of First Nations peoples across Queensland.¹⁶ This representative structure may take some time to develop, and as such, an interim process will be in place represented by an Institute Council appointed for the inaugural period.

The inaugural Institute Council, following consultation with First Nations Peoples, will then advise the Queensland Government on how individuals should be recommended for appointment to the ongoing Institute Council. This will be in the form of an inaugural report from the inaugural Institute Council to the Minister, as required by clause 48 of the Bill.

The Bill has been developed in this way to attempt to stay true to the recommendations of the TAC report.

So in short:

- the inaugural Institute Council is appointed for two years on the recommendation of the Minister
- the Minister may only propose a person for appointment if the person is a First Nations person who is appropriately qualified
- appropriately qualified pursuant to the *Acts Interpretation Act 1954* means having the qualifications, experience or standing to perform the function of being a member of the Council
- the inaugural Institute Council collectively is to reflect the cultural diversity of First Nations peoples and the gender diversity of Queensland
- following the inaugural Council period, the Minister is to take into account the report from the Council on how subsequent members on the Institute Council should be appointed.

The ITTB consultations and engagement with First Nations communities on the inaugural Institute Council will elicit views on the process that the Minister should adopt in making a recommendation for the appointment of members and how life should be given to the 'appropriately qualified' requirement and the issue of cultural and gender diversity.

Importantly the Treaty Working Group, Eminent Panel and TAC Reports acknowledged the need for the Queensland treaty process to be sufficiently adaptable to take into account the Uluru Statement and its themes of Voice, Treaty and Truth. With the Commonwealth government now committed to the Uluru themes and proposing a Constitutional referendum to establish a Voice to Parliament, it is quite conceivable that the regional structures to potentially work with the National Voice would inform how the Institute Council is configured.

It should be noted that the government has established a First Nations Consultative Committee to develop a voice model for Queensland. The Committee membership is drawn from eight (8) regions – Cape York Peninsula, Far North Queensland, Gulf and West Queensland, North Queensland, Central Queensland, South West Queensland, South East Queensland, and the Torres Strait.

The work of the Consultative Committee is separate from that of the ITTB although there is liaison between the groups.

¹⁶ Treaty Advancement Committee, *Treaty Advancement Committee Report, October 2021*, p23. [Treaty Advancement Committee Report October 2021 \(dsdsatsip.qld.gov.au\)](https://dsdsatsip.qld.gov.au) [last accessed 14 March 2023]

The Inquiry - selection and appointment of the Inquiry Members

The Inquiry is to be conducted by five (5) members appointed by the Governor in Council on the recommendation of the Minister. Collectively the members of the Inquiry must have:

- a majority of First Nations persons
- at least 1 Aboriginal member
- at least 1 Torres Strait Islander member
- at least 1 member to be a senior lawyer with experience relevant to the Inquiry.

Each member is to have experience and standing within the Aboriginal community or the Torres Strait Islander community. The Minister is to also appoint a First Nations member of the Inquiry as Chairperson.

It is critical that an open process is undertaken in appointing the Inquiry members and that First Nations communities are involved in the selection process. For instance, the Yoorrook Commissioners conducting the Truth and Healing process in Victoria were appointed following an Expression of Interest period followed by shortlisting and interview by a panel independent of government.

The ITTB will engage and consult with First Nations communities on the process to select members to be proposed to the Minister.

The Inquiry - Terms of Reference

The Bill provides for the functions of the Inquiry to inquire into and document the individual, familial, cultural and societal impacts and effects of colonisation on First Nations peoples. Further, the Inquiry will research into and promote community awareness of the effects of colonisation and the general public's shared understanding of the history of Queensland.

These core functions are to be built upon and elaborated by the Inquiry's Terms of Reference. In preparing the Terms of Reference the Minister may consult with any person considered to have skills, knowledge or experience relevant to the functions of the Inquiry.

The ITTB will engage and consult with First Nations communities on the potential Terms of Reference as well as the wider Queensland community. While the matters to be contained in the Terms of Reference should emerge after consultation, the Yoorrook Justice Commission has Terms of Reference which amongst other things go to:

- systemic injustice and how this manifests in areas such as youth and criminal justice, child protection and family welfare
- economic and social exclusion
- health and healthcare trauma, healing and reconciliation.

In framing the Terms of Reference, the relationship between truth-telling and treaty should be clearly recognised. There have been examples of truth-telling in Australia such as the Royal Commission into Aboriginal Deaths in Custody and the Bringing Them Home Report into the separation of Aboriginal and Torres Strait Islander children from their families. However, treaty-making is not dependent on the Inquiry Report, and there is no requirement for treaty-making to await the report of the Inquiry as such.

The need for truth-telling and healing came through clearly in the community consultations undertaken by the Working Group and Eminent Panel in phase 1 of the Queensland treaty process. Equally, truth-telling was a prominent theme that emerged from the constitutional dialogues that lead to the Uluru Statement. In practical terms, the Inquiry will be able to move forward more quickly than treaty-making and its outcomes should assist First Nations Peoples in preparing for treaty negotiations as well as strengthening the public authorising environment for government to negotiate meaningfully with First Nations communities.

Resourcing

Resourcing is a key factor determining the extent to which structures and organisations can respond to the needs of First Nations Peoples. The need for funding certainty for the Path to Treaty process was raised by communities in Phase One and a key consultation theme summarised in the Treaty Working Group Report. Subsequently, the Eminent Panel made the recommendation to

‘... establish a First Nations Treaty Future Fund into which the State Government should make guaranteed annual allocations for a minimum period of ten years beginning in 2020–2021.’

The Treaty Working Group proposed that the operational costs of the Institute be a priority for funding from this Fund to provide the long-term security the Institute would need to protect and enforce First Nations rights and interests in treaty-making.

The 2021-22 Queensland Budget established the Path to Treaty Fund, to which an allocation of \$300 million was made. In his 2021-22 Budget Speech on 15 June 2021, the Treasurer, the Hon Cameron Dick said:

... I am proud to announce today that the government will establish a \$300 million Path to Treaty Fund. The proceeds of this Fund will provide funding certainty for the Path to Treaty into the future. The Path to Treaty actions will be informed by the government’s consideration of the report of the Treaty Advancement Committee, which is expected to be received later this year.

The Treaty Advancement Committee (the TAC) reported to Government in October 2021 and recommended that a minimum annual allocation of \$10 million from the earnings of the \$300 million Path to Treaty Fund (the Fund) be made available to maintain the Path to Treaty process (Recommendation 16) and that once established, the Institute receive the entirety of allocations from the Fund (Recommendation 17). Recommendations relating to the administration of the funds through key accountability mechanisms and processes were also made as was the need for four-year block resource allocations to support the Institute’s capacity to respond strategically to the needs of First Nations peoples. In its response, the Queensland Government accepted, either in full or ‘in principle’ all of these recommendations.

Institute to be provided full returns of the Path to Treaty Fund

The ITTB, in its work to co-design establishment of the Institute, continues to advocate for funding certainty, supported by a range of accountability mechanisms, to enhance its capability to meet its legislative and operational requirements.

During the life of the TAC, the amount of income from the Fund investment was often quoted by Government as a minimum of \$10 million per year. As a result, this figure is also cited by the TAC in its Report. However, the TAC Report made clear that the deemed minimum return from the Fund is not based on the actual needs of the Institute and that the actual needs may well exceed the \$10 million sum.

More recently, in a meeting with the ITTB on 17 August 2022, Treasury advised that the Queensland Investment Corporation (QIC) expected the Fund to provide a guaranteed minimum return on the investment of the Fund of 6.5%, which provides an estimated income of \$19.5 million per year.

The ITTB continues to advocate for and recommend that the full annual returns from the Fund investments be made available for, as agreed in TAC Recommendation 17, the administration of the Institute’s operations and carrying out of its legislated functions.

Four-year resource allocations

TAC Recommendation 20 deals with the four-year allocation from the Fund to the Institute. Whilst Government has agreed to this recommendation, there are particular matters that require clarification.

Firstly, it is understood that a four-year allocation would be made to the Institute from the Fund upon submission of a four-year Institute Strategic Plan. It is also understood that the four-year allocation would be bound by an agreement. However, it is again understood that the release of periodic cash payments which make up this four-year allocation would see the funds transferred from Treasury to an account established by Treasury, and the Department who would then release funds to the Institute in accord with arrangements resolved between the Department and the Institute.

It is noted that in the 2021-22 Budget Papers, these are described as 'Administered Funds' which are ... administered by the department on behalf of government. Importantly, the Budget Papers also say that ... the Department cannot use these funds for any purpose other than they were intended.

The initial intent of establishing the Treasury Fund was that there would be certainty of resourcing for the Path to Treaty Process. Thus far, all of the Government's responses have provided as much certainty as possible.

However, the experience of Aboriginal and Torres Strait Islander organisations and peoples is one of mistrust of Departments when it comes to funding, where there has been inappropriate and almost punitive processes put in place whose sole aim is to frustrate the purpose for which funds are provided. This is generally framed around accountability measures or behaviour.

These processes need to be settled before the Institute is established, so that the Institute Council can be confident in the level of resources available to it going forward.

Given this view, the ITTB, recommends that the development of the processes for the transfer of funds from the Fund to the Institute be overseen by the Treasurer as a matter of urgency, and that an independent dispute resolution process to mediate any concerns around these matters be established in the event of the agreed process being compromised by either party.

Accountability to the public and First Nations peoples

The TAC aspired for the Institute to be the epitome of accountability and transparency in both the conduct of its legislated tasks, and the accountability for the resources made available to it, particularly from the Fund. This aspiration is reflected in the accountability regime provided in the Bill.

Whilst the Institute, as a statutory body in Queensland will be required to comply with various other legislation such as the *Statutory Bodies Financial Arrangements Act 1982* (SBFA Act) and *Financial Accountability Act 2009* (FA Act), the Bill proposes several additional measures to strengthen this accountability.

First, in accounting for the finances of the Institute, the Bill, clause 32 mandates the establishment of ... *an advisory committee to consider, and provide advice to the Council about, matters relating to financial auditing and financial risk management in relation to the Treaty Institute*.

There are also key mechanisms and processes as set out in the Bill that will ensure the Institute is accountable to community. These include a Research and Ethics Advisory Committee and an Annual Report which will be publicly available.

The Bill also establishes a role of Institute Secretary whose role, as outlined at clause 43 of the Bill, is to:

- a) to advise the Treaty Institute on administration and governance matters to assist the Institute in the performance of its functions;
- b) to support the effective and efficient administration and operation of the Treaty Institute Council and the advisory committees;
- c) to ensure the implementation of, and compliance with, the written policies and directions of the Treaty Institute Council; and
- d) to ensure the Treaty Institute Council performs its functions and exercises its powers in accordance with the principles of transparency and accountability.

The Bill also mandates how to deal with disclosures of interests at clause 30 and clause 52-55 provides remedies for inappropriate or improper conduct in an official capacity; or inappropriate or improper conduct in a private capacity that reflects seriously and adversely on the office by the:

- suspension of Institute Council members;
- removal of Institute Council members;
- removal of senior executive officers; and
- disqualification of Institute Council members and senior executive officers.

The measures mentioned directly above are in addition to, or work in conjunction with, the existing legislative requirements of statutory bodies in Queensland.

The ITTB, and previously the TAC, have also been putting thought into additional accountability mechanisms for the Institute, that are not necessarily raised in the Bill, but are necessary for the Institute to carry out its legislated functions. This includes, for example, an Institute multi-year strategic plan, regular consultations, meetings and forums with communities across Queensland.

In particular, the Institute Strategic Plan, which will outline the ambitions, the deliverables, and the stages towards treaties over the coming four-year period, will provide a high standard of transparency in the operations of the Institute.

Accountability of the Institute towards achievements within the Strategic Plan will be provided by the provision of a publicly available Institute Annual Report, as noted in the Bill, that will include, amongst other things, an audit of finances and a report of the progress of treaty-making.

The ITTB is conscious of and is awake to the need for transparency and accountability in the operations, conduct and financial management of the Institute to the Government, Aboriginal and Torres Strait Islander Peoples of Queensland and to Queenslanders more generally. We believe all these measures will significantly reduce the risk of mismanagement, misconduct and misappropriation within the Institute.



**INTERIM TRUTH
AND TREATY BODY**

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Parliament House
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12 April 2023

Dear Committee Secretary

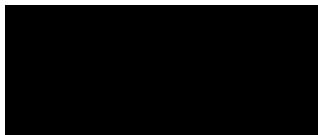
RE: Path to Treaty Bill 2023

The Interim Truth and Treaty Body welcomes the opportunity to make a supplementary submission to the Community Support and Services Parliamentary Committee on the Path to Treaty Bill 2023.

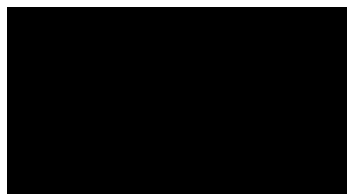
Please see attached to this letter the ITTB Supplementary Submission on the Path to Treaty Bill 2023.

Please contact Professor Michael Lavarch AO by email at secretariat@iib.qld.gov.au if you require more information.

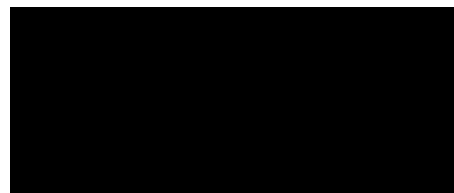
Yours sincerely



Cheryl Buchanan
Co-Chair
ITTB



Sallyanne Atkinson AO
Co-Chair
ITTB



Professor Michael Lavarch AO
Chair, Legal Advisory Committee
ITTB



INTERIM TRUTH AND TREATY BODY

**Supplementary Submission to the Community Support
and Services Parliamentary Committee on the
Path to Treaty Bill 2023**

ITTB - Supplementary Submission to the Community Support and Services Parliamentary Committee on the Path to Treaty Bill 2023

Overview

The Interim Truth and Treaty Body (ITTB) thanks the Committee for the opportunity to make a supplementary submission on the Committee's inquiry into the Path to Treaty Bill 2023 (the Bill).

In the ITTB initial submission, a brief explanation was given of the co-design process adopted for the development and drafting of the Bill. It was noted that co-design had strengths and limitations with one limitation being that the drafting of legislation is an internal process of government and is subject to confidentiality obligations. The consequence of the confidentiality obligations was that the ITTB was not able to disclose copies of the Bill to third parties and no consultation with First Nations communities on the Bill was possible prior to its introduction to the Queensland Parliament.

One benefit of the Committee's inquiry is that submissions and evidence have been received that have provided critiques and suggestions as to how the Bill and the two institutional arrangements created by the Bill - namely the First Nations Treaty Institute (the Institute) and the Truth-telling and Healing Inquiry (the Inquiry) could be improved. As noted, input of this kind was not available to the co-design process.

The submissions and the contributions to the Committee have overwhelmingly supported the Path to Treaty and the creation of the Institute and the Inquiry as the primary mechanisms to advance treaty and truth-telling. While there have been several suggestions for change, the threshold question is whether the issues raised mean the Bill should be delayed and further developed and refined before being considered by Parliament or proceed to debate in May as currently scheduled.

It is recognised that the Bill could be refined and improved in some respects but the benefit that might be obtained is far outweighed by the advantage of moving forward and having the Institute established and the Inquiry commenced. The Bill itself recognises that it is dealing with novel issues and for Queensland, it is breaking new ground. That is why the Bill builds in several review and refinement points, notably:

- the inaugural period for the Institute Council and presentation to government of the inaugural report on how the Institute Council members be elected/selected and the general performance of the functions of the Institute under clause 48
- the regular reporting function of the Inquiry to government under clause 87 and
- the overall review of the Act required under clause 94.

These review steps will require consideration by the Institute Council, the Board of Inquiry and the Queensland government of changes to improve the functioning of the Institute and Inquiry respectively based on operational experience.

Accordingly, the ITTB has reviewed the submissions and evidence placed before the Committee and assessed the Bill to identify any amendments that are essential to be made prior to the Bill's debate and passage. Other suggestions for change are best considered in light of operational experience and advanced at the review points.

In summary, the IITB recommends that three amendments be made to the Bill prior to its passage by Parliament, namely:

1. Schedule 1 – Dictionary
The definition of 'chief executive officer' be amended to make absolutely clear that the Commissioner of Police and the Queensland Police Service is subject to the compulsion powers of the Inquiry. The definition should also be amended to include chief executive officers of local government instrumentalities.

2. Clause 64 (2): Establishment and Term of Inquiry

That the Inquiry *be established for a term of not more than five years*, as opposed to the three years currently proposed. This will be supported by an amendment to Clause 87 (below) to include a requirement that the Inquiry report to the Minister before the expiration of three years, to confirm the need for a further two-year period of operation (or otherwise).

3. Clause 87- Requirement to keep Minister informed

- The clause be amended to expressly provide for the Inquiry no later than 12 months after commencement to report to the Minister on the functions and operations and powers of the Inquiry;
- The clause be amended to provide for the Inquiry to provide a report to the Minister before the expiration of three years, to confirm the need for a further two-year period of operation (or otherwise); and
- The Minister must table the report in the Legislative Assembly within 14 days after receiving the report and as soon as reasonably practical prepare a response to the report.

Schedule 1 – Dictionary

The ITTB recommends that the definition of ‘chief executive officer’ be amended to make absolutely clear that the Commissioner of Police and the Queensland Police Service, as well as local government instrumentalities are subject to the compulsion powers of the Inquiry.

As the Committee is aware, the Bill currently limits the coercive powers of the Inquiry to CEOs of government agencies. As a result of the current drafting, Queensland Police Service (QPS) and Local Government Councils might not be captured by the reach of the compulsion powers to produce documents or appear before the Inquiry.

The ITTB would like to make explicit that it was always intended that the QPS and Local Councils be within the scope of the Inquiry’s compulsion powers. For this reason, the ITTB proposed the Schedule 1 – Dictionary be amended to expand the definition of ‘chief executive officer’ so as to make absolutely clear that the Commissioner of Police and the Queensland Police Service as well as Local Authorities are subject to the compulsion powers of the Inquiry.

Establishment and Term of Inquiry

The Bill proposes that the term of the Inquiry be no more than three years, although the possibility for extension is expressly recognised in clause 64 (3). A range of submissions have suggested that three years will prove to be an unrealistic and insufficient timeframe for the Inquiry’s operation.

Evidence to the Committee has referenced the recent experience of the Victorian Yoorrook Justice Commission, which has been granted a further 12-month extension. In its June 2022 Interim Report, the Yoorrook Justice Commission expressly called out the need for significant time for community engagement and the need to build trust prior to engaging in formal processes of the Inquiry:

an early lesson is to factor in the time needed for this, including community consultation and feedback and the development of culturally appropriate processes and practices (p15).

The Victorian experience and the wider arguments made in the evidence is quite compelling that the three-year timeframe will almost inevitably be extended. Given this, the ITTB believes it would be preferable to establish the Inquiry with a five-year timeframe and greatly lessen the prospect of further extensions being sought.

ITTB - Supplementary Submission to the Community Support and Services Parliamentary Committee on the Path to Treaty Bill 2023

To balance the extension of the Inquiry term and recognising that the work of the Inquiry might be concluded in advance of five years, it is also suggested that Clause 87 be amended to provide for a report to the Minister after three years of the Inquiry. This report will provide advice as to progress and whether all of the final two years will be required to complete the Inquiry.

It is not proposed that the possibility of further extension is entirely removed, as flexibility to account for the unforeseen is always valuable - for example future alignment with a National Truth-telling process under the mooted Makarrata Commission - but the clear expectation is that the Inquiry would be completed within five years.

Requirement to keep Minister informed

A major critique of the Bill in submissions has been about whether the compulsion powers of the Inquiry should be extended beyond government. It has been argued that private individuals, entities and institutions beyond government agencies (such as faith-based bodies) have also been significant actors in the colonial history of Queensland. It is contended that coercive powers might be needed on occasions to gain information and ensure participation from these non-government actors:

The ITTB acknowledges these arguments. The full suite of compulsion powers was not the model of the Truth-telling and Healing Inquiry envisaged by the Treaty Advancement Committee, and the ITTB remains of the view that a culturally lead, non-adversarial model that is not a Royal Commission has many advantages. However, the ITTB accepts that if non-government entities fail to fully engage in the Inquiry and provide required documents and information, public faith in the Inquiry and thereby potentially First Nation participation might be undermined.

The answer of whether wider powers will in practice be required will come from the operational experience of the Inquiry. In short, is the work or credibility of the Inquiry being hampered by the coercive powers being only available when dealing with government? For this reason, the ITTB recommends that within 12 months of the Inquiry commencing it reports to the government through the Minister on whether changes are required to its functions, operations and powers; and as argued above at three years to advise on whether the Inquiry will require two further years to complete its functions.

By strengthening and giving a defined timeframe to the review envisaged under clause 87, the question of the powers of the Inquiry as well as broader aspects can be considered in light of actual experience. Further, by extending the term of the Inquiry from three to five years, the time taken to learn any lessons and devise improvements if required will not compromise the mission of the Inquiry.