

Path to Treaty Bill 2023

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QUEENSLAND INDIGENOUS FAMILY VIOLENCE LEGAL SERVICE

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

17 March 2023

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The Queensland Indigenous Family Violence Legal Service (QIFVLS) Submission to the 57th Queensland Parliament Community Support and Services Committee regarding the *Path to Treaty Bill 2023*

Executive Summary

Queensland Indigenous Family Violence Legal Service (QIFVLS) Aboriginal Corporation ('QIFVLS') welcomes the opportunity to provide submissions on the recently tabled *Path to Treaty Bill 2023 (the Bill)*.

As a member of the Coalition of Peak Aboriginal and Torres Strait Islander peak organisations (Coalition of Peaks), QIFVLS is dedicated to achieving the priority reforms and socio-economic targets outlined in the [National Agreement on Closing The Gap](#). At its core, QIFVLS strives to achieve Target 13 (ensuring families and households are safe and that domestic and family violence against Aboriginal and Torres Strait Islander women and children is reduced by at least 50% by 2031 as we progress towards 0).

Our clients, from over 80 communities throughout mainland Queensland and in the Torres Strait Islands, find themselves in situations of despair through what we observe daily as family violence being an intersecting point linking an Aboriginal and Torres Strait Islander person's connection to the child protection system, youth justice system, adult criminal justice system, housing and/or homelessness, health, disability and the family law system. Underpinning these connectors are deeper drivers, namely the impacts of colonisation, intergenerational trauma, structural inequality, discrimination and gender inequality.

Amidst this backdrop, the *Path to Treaty Bill* is a hugely significant step redrawing and improving the relationship between the state of Queensland and the Aboriginal peoples and Torres Strait islander peoples in this state. We commend the Government in this regard for this proactive measure which can only benefit which can only be a benefit to all peoples in Queensland.

We understand that this Bill signals a path through which the Parliament will:

- Establish the Treaty Institute as a statutory body to support Aboriginal and Torres Strait Islander peoples to prepare for and participate in treaty negotiations.
- Establish a Treaty Institute Council.
- Include a preamble in the Bill that acknowledges the impacts of colonisation and recognises the rights of Aboriginal and Torres Strait islander peoples.
- Provides guiding principles to apply to the Path to treaty process.
- Establishes a culturally appropriate Truth Telling and Healing Inquiry to inquire into the historical and ongoing impacts of colonisation on Aboriginal and Torres Strait Islander peoples in Queensland and facilitate truth-telling and healing for all Queenslanders.

We have some concerns however, that the National Agreement on Closing the Gap (the National Agreement) is not explicitly mentioned in the Bill. Although the National Agreement is not mentioned in either the Bill or the Explanatory Notes, we believe there is a space for the Path to Treaty to work in harmony with the objectives, priority reforms and socioeconomic targets outlined in the National

Agreement. The priority reforms to the National Agreement, which are effectively the building blocks and form the framework to achieve the 17 socio economic targets, are provided below:

- Priority Reform 1 – Formal partnerships and shared decision-making.
- Priority Reform 2 – Building the community-controlled sector.
- Priority Reform 3 – Transformation of mainstream institutions.
- Priority Reform 4 – Sharing data and information to support decision-making.

At its core, the Path to Treaty process is vital to establishing a voice for Aboriginal and Torres Strait Islander peoples in Queensland to reconcile Queensland's traumatic history with its potential for a bright future. The priority reforms in the National Agreement in particular provide an underpinning foundation through which the government can work to reframe its relationship with Aboriginal and Torres Strait Islander peoples while engaging in the Path to Treaty process.

To that end, our responses below identify areas in which we believe the Bill could be enhanced by advocating for consultation and shared decision-making. We are heartened that this has been a feature of the Path to Treaty process to date and we understand that the Independent Interim Body will provide guidance as an independent mechanism by which First Nations communities can be involved in the legislative process.

Our desire as an Aboriginal and Torres Strait Islander Community Controlled Organisation (ACCO) is that the Independent Interim Body, together with the Government and the Minister will engage with a range of Aboriginal and Torres Strait Islander stakeholders, including the Queensland Aboriginal and Torres Strait Islander Coalition of peak bodies (QATSIC), Community Controlled Organisations, Aboriginal and Torres Strait Islander stakeholder groups and Elders in advancing the Path to Treaty process and ensuring our communities are ready and prepared for treaty negotiations.

Summary of QIFVLS submissions

QIFVLS offers the following feedback:

- We support the Path to Treaty process and the legislation giving effect to the Government's commitment to be courageous and open to hearing the truth of our state's history and to work in partnership towards preparing to negotiate treaties.
- We welcome the Bill's incorporation of the recommendations of the Treaty Advancement Committee (TAC) to establish:
 - Treaty Institute.
 - Treaty Institute Council; and
 - Truth Telling and Healing Inquiry;
- In line with the National Agreement on Closing The Gap, we believe there is room for further consultation in the Bill regarding:
 - How the members of the Treaty Institute are appointed;
 - The selection process for members chosen for the Truth Telling and Healing Inquiry; and
 - The design of the terms of reference for the Truth Telling and Healing Inquiry.
- In agreement with Recommendation 10.1 of the Treaty Advancement Committee's (TAC) Report, we support the Treaty Institute providing an annual report to the Queensland Parliament.
- We believe consideration should be given to the selection criteria for becoming a member of the Treaty Institute and whether receiving a conviction in a person's younger life should automatically exclude them from becoming a member in circumstances where they have rehabilitated themselves to the point of becoming an effective and valuable contributor to their

community/ies. However, this should be treated on a case by case basis with clear guidance that for certain categories of offences (primarily related to offences that go to the heart of integrity and honesty), this will automatically exclude membership of the Treaty Institute.

About QIFVLS

QIFVLS is a not-for-profit legal service formed under the Family Violence Prevention Legal Services Program ('FVPLSP') through the Department of Prime Minister and Cabinet's Indigenous Advancement Strategy ('IAS'). FVPLSP fills a recognised gap in access to culturally appropriate legal services for Aboriginal and Torres Strait Islander victims of family and domestic violence and sexual assault.

QIFVLS is one of fourteen (14) Family Violence Prevention Legal Services ('FVPLSs') across Australia and one of the thirteen (13) FVPLSs that are part of the National Family Violence Prevention Legal Service ('NFVPLS') Forum. We are one of two Aboriginal and Torres Strait Islander community-controlled family violence prevention legal service providers in Queensland.

QIFVLS is exclusively dedicated to providing legal and non-legal support services to assist Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault with a breadth and scope of services which stretch to the outer islands of the Torres Strait, neighbouring Papua New Guinea. Together with its legal services, QIFVLS can be distinguished from other legal assistance providers through its advantage in providing unique, specialised, culturally safe and holistic assistance from the front-end via a wrap-around model that embraces early intervention and prevention. We advocate this model in supporting access to justice and keeping victim-survivors of family violence safe.

QIFVLS services 80+ communities across Queensland including the Outer Islands of the Torres Strait, neighbouring Papua New Guinea and provides services in the areas of domestic and family violence; family law; child protection; sexual assault and Victims Assist Queensland (VAQ) applications. QIFVLS supports its clients through all stages of the legal process: from legal advice to representation throughout court proceedings. In addition, QIFVLS responds and addresses our clients' non-legal needs through our integrated non-therapeutic case management process, which is addressed through the identified role of the Case Management Officer. QIFVLS as a practice, provides a holistic service response to our clients' needs: addressing legal need and addressing non-legal needs, that have in most cases, brought our clients into contact with the justice system in the first place.

QIFVLS' Case Management Practice model

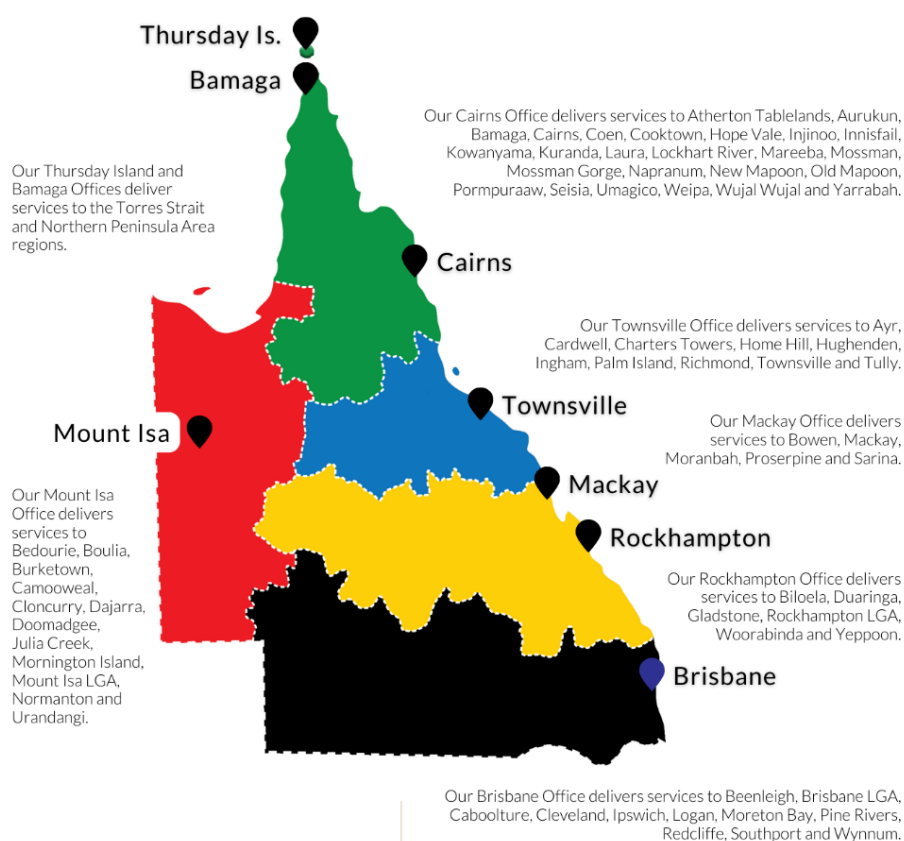
To address an area of unmet need, QIFVLS, within its current funding through the Department of Prime Minister and Cabinet and now, through the National Indigenous Australians Agency (NIAA), developed and implemented a Case Management Practice to complement and run alongside the legal practice. The Case Management Practice was originally piloted in our Rockhampton office in 2016 and provided success in being able to holistically respond to both legal and non-legal needs of victim-survivors of family violence. The Case Management Model was then expanded for trial in our Mount Isa office in 2018 and proved successful there. As a result, QIFVLS has now integrated and embedded the Case Management Practice across all QIFVLS offices across the state of Queensland.

The Case Management Practice is a non-therapeutic model based on the principles of the Case Management Standards of Australia but tailored to be delivered by an ACCO for and by Aboriginal and Torres Strait Islander peoples. Clients entering case management are assisted to address their non-legal needs whilst also responding and addressing their legal needs. This is a holistic, wrap-around service delivery model that utilises strong referral pathways with existing service providers in community, whilst

HEAD OFFICE	FAR NORTH QLD	NORTH QLD	CENTRAL QLD	BRISBANE	GULF & WEST QLD
PO Box 4628	PO Box 4643	PO Box 2005	PO Box 690	PO Box 126	PO Box 3073
Lvl 1, Ste 5, 101-111 Spence St	Lvl 2, 101-111 Spence St	Lvl 2, 61-73 Sturt St	Lvl 2A 130 Victoria Pde	201 Wickham Tce	19 Isa St
Cairns QLD 4870	Cairns QLD 4870	Townsville QLD 4810	Rockhampton QLD 4700	Spring Hill QLD 4004	Mt Isa QLD 4825
P: 07 4045 7500	P: 07 4030 0400	P: 07 4721 0600	P: 07 4927 6453	P: 07 3839 6857	P: 07 4749 5944
F: 07 4027 1728	F: 07 4027 9430	F: 07 4764 5171	F: 07 4807 6162	F: 07 3319 6250	F: 07 4749 5955

allowing a client to set achievable goals at a pace determined by the client, thereby achieving self-efficacy and self-determination.

Another stand out feature of QIFVLS Case Management Practice is that our Case Management Officers as well as our Case Management Practice Manager, are all identified roles. The case management support that is provided to QIFVLS clients is delivered by duly qualified Aboriginal and Torres Strait Islander QIFVLS staff within a trauma informed and culturally safe manner.



As demonstrated by the above map QIFVLS is mainly an outreach service where our teams go into rural and remote communities to meet with clients. QIFVLS services over 80+ Aboriginal and Torres Strait Islander communities throughout Queensland. Recognising that Queensland is nearly five (5) times the size of Japan; seven (7) times the size of Great Britain and two and a half (2.5) times the size of Texas¹, QIFVLS has nine (9) offices in Queensland –

- (1) a service delivery office in addition to its Head Office located in Cairns, responsible for servicing Cape York communities, Cooktown; Atherton Tablelands, Innisfail, and Yarrabah (and communities in between);
- (2) a service delivery office in Bamaga responsible for servicing Cape York communities as far north as Bamaga and Umagico;
- (3) a service delivery office on Thursday Island responsible for servicing communities stretching to the Outer Islands of the Torres Strait, neighbouring Papua New Guinea;

¹ <https://www.qld.gov.au/about/about-queensland/statistics-facts/facts>

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- (4) a service delivery office in Townsville responsible for servicing Townsville, Palm Island, Charters Towers, Richmond and Hughenden (and communities in between);
- (5) a service delivery office in Rockhampton responsible for servicing Rockhampton, Woorabinda, Mt Morgan, Biloela (and communities in between);
- (6) a service delivery office in Mount Isa responsible for servicing Mount Isa, the Gulf of Carpentaria communities, as far south as Bedourie and across to Julia Creek (and communities in between);
- (7) a service delivery office in Brisbane responsible for servicing the Brisbane local government area;
- (8) a service delivery office in Mackay responsible for servicing Mackay and outlying communities including Sarina for example.

Appointment of Treaty Institute members

We understand that Clause 19 of the Bill will provide that members of the Inaugural Treaty Institute Council will consist of 10 members and will be appointed by the Governor-in-Council on recommendation of the Minister. This follows Recommendation 6 of the TAC Report.

In determining which member to recommend, there is a gap in the Bill regarding the Minister engaging in consultation with First Nations communities in the process of shortlisting and recommending members of the Treaty Institute Council. We support the Bill including an additional provision that the Minister will engage in consultation with and consider the advice of First Nations communities in considering whether to recommend a person for appointment as a member. We believe that the wording of Clause 19(4) is not clear enough in enunciating the importance of consultation and shared decision-making and partnerships with First Nations communities.

We have observed that Clause 48 of the Bill provides that the Treaty Institute Council will outline a process for appointing a member to the Treaty Institute Council in their Inaugural report to the Minister within six (6) months before the inaugural period ends. Prior to reaching this stage however, we stress the importance of input from First Nations communities in the recommendation and appointment process.

Disqualification of Treaty Institute members

We observe that under Clause 55(1)(d) of the Bill, a person is disqualified from becoming a member of the Treaty Institute Council or a senior executive office if they have a conviction, other than a spent conviction, for an indictable offence.

From our interpretation, it would appear that there is the possibility that a prospective member who was convicted and sentenced to a period of imprisonment longer than 30 months back when they were a younger person would be disqualified in later adult life from becoming a member, despite rehabilitating themselves and becoming a valuable contributor to their community. We fully support the rationale behind maintaining the integrity of the membership of the Treaty Institute Council. However, we would like the Committee and the drafters to take a holistic view and consider the overall context of the over-incarceration of Aboriginal and Torres Strait islander peoples in the criminal justice and corrections systems throughout Queensland's colonial history to the present day.

Perhaps the drafters may consider a further show-cause provision or another mechanism enabling the prospective member to demonstrate how they have rehabilitated themselves, in circumstances where they may not meet the strict category of being rehabilitated under the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

Selection process for members of the Truth Telling and Healing Inquiry

We note that Clause 67 of the Bill sets out the requirements for membership of the Truth-Telling and Healing Inquiry (the Inquiry). What the Bill does not highlight is the importance of consultation with First Nations communities in the process of selecting members. We believe this to be a significant departure from the TAC Report which underscored the significance of engaging with First Nations communities in order to establish the legitimacy and standing of the Inquiry.

Viewing this from the lens of the National Agreement on Closing the Gap, consultation with First Nations communities, community-controlled organisations, Elders and other First Nations stakeholder groups would represent steps towards shared decision-making and partnerships between government and First Nations communities. It would also be an example of the government reframing the relationship with First Nations communities in line with Priority Reform 3 (transforming mainstream institutions) of the National Agreement.

As the Committee is aware, there is a significant trust-deficit between First Nations communities and Government and welcoming our communities inside the decision-making tent and demonstrating a transparent process will be a significant move towards enabling communities to have faith in the Inquiry specifically and the overall Path to Treaty process broadly.

We highlight the TAC's comments in their report that,

"The process cannot be a matter solely for government and must have the clear and direct involvement of First Nations peoples."

In that regard, we recommend that Clause 67 could be clarified by including a provision that the Minister will engage in consultations with First Nations communities in the process of selecting members to the Inquiry.

The design of the Truth Telling and Healing Inquiry's Terms of Reference

We welcome Clause 65's requirement for the Minister to consult with any person the Minister considers has skills, knowledge or experience relevant to the Inquiry in the process of preparing the Terms of Reference. We understand that the Independent Interim Body will play a key role in this regard. We have observed that the Explanatory Notes go further by mentioning that in this process, the Minister will consult in particular with Aboriginal and Torres Strait Islander peoples. This is not reflected in Clause 65 of the Bill.

The TAC's Report was clear that the design of the Inquiry, including settling the Terms of Reference should be undertaken collaboratively with First Nations communities. The report further elaborates that the Independent Interim Body will facilitate First Nations involvement in decision-making. We wish to see explicit reference to engagement with First Nations communities reflected in clause 65.

Tabling of the annual report in Parliament

We note that Recommendation 10.1 of the TAC's Report recommends that the Institute provide an Annual Report to the Queensland Parliament. This is supported by Recommendation 10.2 – development and publication of a Strategic Plan every four (4) years. These are two key accountability mechanisms for the

Institute, ensuring best practice in its operations and transparency in its decision-making and clarity of purpose.

In contrast, we note that Clause 49 of the Bill refers to the annual report being provided to the Minister instead of Parliament. To support the independence of the Treaty Institute and the Treaty Institute Council, our submission is that the Annual Report be provided to Parliament.

Alternatively, we enquire whether Clause 49 could be clarified such that upon the Annual Report being given to the Minister, the Minister will then table it in Parliament within a specified time frame. This would be similar to the wording in Clause 48(3) which provides that the Treaty Institute Council's inaugural report will be tabled in the Legislative Assembly by the Minister 14 days after receipt of the inaugural report from the Institute Council.

Conclusion

We take this opportunity to thank the Committee for considering our feedback regarding the Path to Treaty Bill. We trust that our viewpoint as both an Aboriginal and Torres Strait Islander Community Controlled Organisation and a Family Violence Prevention Legal Service provides assistance to the Committee. We look forward to being involved as the Bill progresses through Parliament and preparations are made for our communities to be treaty-ready.