

Path to Treaty Bill 2023

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

Iman Wardingarri Aboriginal Corporation Submission re Path to Treaty Bill 2023

Ms Corrine McMillan MP, Member for Mansfield (Chair)

Dear Ms McMillan

Wardingarri Prescribed Aboriginal Corporation is incorporated under the Corporations (Aboriginal and Torres Strait Island) Act 2006 (Commonwealth) and managed by Iman traditional owners, Elders, and community members. At present we have over 1000 Iman members. Wardingarri is the Iman name for the Dawson River which winds through five towns in the area of the Western Downs. The Corporation values and respects IMAN people's inherent native title rights, cultural values, spiritual beliefs and living relationship with country.

We enter into the Treaty Making and Truth Telling process with both hope for the future and trust in the statements of genuine cooperation, a shared journey, mutual respect, and a commitment to revealing the true history of the lands that are now collectively called Queensland. However we also enter this process with a well-founded scepticism and deep-rooted caution.

We understand that the Treaty Making and Truth Telling process is an initiative of the current Queensland Labor Government and therein the instrument of the Queensland State. We note that it was Queen Victoria who initially granted approval and signed Letters Patent that resulted in the establishment of the new colony of Queensland on 6 June 1859. On the same day, an Order-in-Council gave Queensland its own Constitution.

It is therefore a fact that the State of Queensland has existed for a mere 164 years. A moment in the life of the lands that are now collectively called Queensland. It should be remembered that this is not our name for these our lands. It should be remembered that we, the Iman People, and Iman Nation, have been on this land for thousands of years, from time immemorial. It should be remembered that we never ceded sovereignty.

Well before Queensland became a self-governing body our Iman Nation and our Iman ancestors were subjected to unspeakable brutality, with murders, torture, rapes, slavery, theft being common places. These appalling practices continued with the advent of the State of Queensland. Our destruction was so immense as to have public records recording that we no longer existed as a Nation nor as a People. Accordingly it should be obvious as to why we now approach this treaty making and truth telling process with scepticism and caution. The fact is that we have been waiting 164 years for recognition, for treaty, for compensation, for saying sorry. It is paradoxical that in that 164 years it has been the State of Queensland, through its Parliaments, legislation and instruments, its silence and complicity in the face of mass murder, its tolerance of innumerable cruelties, its part in the countless thousands forcibly removed from lands and homes, in stolen wages, in forced adoptions, and the countless deliberate acts of destruction of our culture, that now asks our trust.

Hence, while The IMAN Wardingarri Aboriginal Corporation welcomes this opportunity to comment on the Path to Treaty Bill 2023, your Committee should be more than aware of our history and our hesitation and suspicions.

Underlying Process Principles

Please note that in making our submission we have also referred to the October 2021 Report from the Treaty Advancement Committee (TAC).

The Path to Treaty Bill 2023, and preceding reports, contain statements of principles including respect, codesign, shared journey, engagement et al. These are fine words and praiseworthy principles. But they will ring hollow if information and communication is poor, is predominantly a one way flow and fails to reflect the realities of the lives of First Nations' Peoples. Regrettably, our Corporation and our Iman people have, to a very large extent, been unimpressed with the processes to date. We give some examples:

1. The Path to Treaty Bill 2023 was introduced into Parliament on 22 February 2023. The Bill was referred to the Community Support and Services Committee for detailed consideration and the closing date for written submissions was determined as 12:00pm (noon) Friday, 17 March 2023. This timeline may have suited the Committee, the Parliament and it may have been driven by political considerations. However this timeline is simply discourteous and it contradicts one of the most stated process principles of respecting the realities of First Nations' Peoples. Our Corporation has few resources, we have little access to legal advice on a matter such as this and it is impossible to have any sort of meaningful consultation with our Iman members. Once again, 'white fella' processes are followed with little to no regard for First Nations and People processes, lore and protocols.
2. We are now aware that the very first public briefing to your Committee came from public servants in the Path to Treaty Office. It appears that this Office has played an important role in the lead up to the tabling of the Path to Treaty Bill 2023 and will have an equally important role in the implementation of the legislation. Yet, in all the time this path to treaty process has been occurring, our Corporation has never received information or communication from this office. We remain unclear as to its role, function, personnel and whether it meaningfully engages with First Nations' communities, the latter being another stated principle. In our view this office lacks transparency and does not seem to have even the most fundamental of communication practices.
3. As referenced below, we remain gravely concerned about the processes for the selection and appointment of persons to the Treaty Institute Council, the Advisory Committees the Treaty Institute Council, the Treaty Institute itself, and the Truth-telling and Healing Inquiry. It is not clear as to how such appointments will reflect the views of the many Queensland First Nations and Peoples. It is absolutely essential that these processes are transparent, robust, consultative such as to leave Queensland First Nations and Peoples with confidence in the integrity and competence of any appointees.
4. Finally, we note the repeated and critical theme of the imperative for consultation on all matters relating to Treaty/Treaties and the Truth-telling and Healing Inquiry. We further note that the Treaty Working Group is reported to have engaged in community consultations in 24 locations across the state, and those consultations were supplemented by online surveys and written submissions. Our Corporation, and we suspect our Iman members, have found it extremely difficult to find out information about the timing and location of such previous consultations. It may well be that people in the inner circle are aware of these consultations but we are very confident that this is not the case for our members and we suspect for vast numbers of

Queensland First Nations and Peoples. To be frank, if this treaty and truth-telling inquiry is to have legitimacy a significant change needs to be made in the consultation processes with the use of multiple social and public media mechanisms. At minimum it should include all Aboriginal and Torres Strait Islander Corporations similar to our own. We ask what is the communication and information strategy envisaged for the planned consultations?

Given limited time and limited resources we turn now to specific questions about selected parts of the Bill.

PART 2 FIRST NATIONS TREATY INSTITUTE

Division 2 deals with the functions and powers of the Institute

- We can only reiterate the critical importance of communication and consultation if these Institute functions are to be performed meaningfully and remain true to the principles that this is a genuine and shared journey respectful of our culture, the limitations of our resources, and what remains of our lore. There is almost no mention of our lore in informing the work of the Institute.

Division 3: deals with the Treaty Institute Council

Subdivision 19 deals with Council Membership

- This is envisaged as the governing body of the Treaty Institute. We are disappointed that the power to appoint members to the Council is heavily skewed in favour of the Minister of the day. There is little to no counterbalance allowing veto or even consultation by a yet to be considered representative Aboriginal and Torres Strait Islander body. Governments of different political parties will come and go leaving appointments to the vagaries of the political and popular whims. We consider that a greater balance needs to be struck on the appointment of Council members with built in protections against political appointees as has become the custom across a wider range of statutory entities.

Subdivision 29 deals with voting at meetings

- Our cultural traditions very much align with decision making by consensus. We recommend that a reference be made to this method of decision making as being culturally sensitive and placing an onus on all members to work collaboratively. Decision by casting vote should be an absolute last resort.

Division 4 deals with Advisory Committees

Subdivision 32 deals with the particular committees

- As noted above there appears to be no description of the process for appointment of members of the respective committees. We ask how appointments will be made, what qualifications will be required, what communications mechanism will be in place to inform interested parties.

Division 5 deals with the Treaty Institute CEO

Subdivision 37 deals with the CEO Appointment

- We offer a similar comment to the above namely what mechanism will be in place to ensure that the CEO is a person who enjoys the confidence of a wide range of the Aboriginal and Torres Strait Island Nations, communities, and individuals.

Division 6 deals with the Treaty Institute Secretary

Subdivision 42 deals with the appointment of the Secretary

- Our comment above applies namely what mechanism will be in place to ensure that the CEO is a person who enjoys the confidence of a wider range of the Aboriginal and Torres Strait Island Nations, communities, and individuals.

PART 3 TRUTH-TELLING AND HEALING INQUIRY

Division 1 Establishment, and terms of reference and functions

Subdivision 64 deals with the establishment and terms

- We have grave concerns that a genuine Truth telling and Healing Inquiry can be held within a three-year framework. We have already referred to the extraordinary suffering experienced by our own Iman Nation and our Iman people. There is an exceptional amount of work that must take place within our community to prepare members to tell the story of their lives and that of their ancestors. No one should underestimate the exceptional challenge and difficulty in telling a story of brutality and merciless hardship. We also want to tell the story of our equally remarkable survival and resilience. We believe three years is an absolute minimum and preparations, especially in the way of adequate funding, must be made for a much longer time frame. Having waited 164 years it would seem reasonable to wait for a period longer than 3 years to get this right.

Subdivision 66 deals with functions

- We note plans for truth telling sessions and truth telling hearings. We simply repeat a now constant theme that communication on where and how and who will be involved in such sessions and hearings needs to be much improved over our past experiences. It will be essential to allow time for preparation and hearings must be conducted in ways that are incredibly culturally sensitive and respectful of the trauma that such sessions and hearings are likely to bring, especially to our Elders.

Division 2 deals with Membership

Subdivision 67 deals with inquiry membership

- In our view truth telling and healing is most likely the most sensitive issue incorporated into the Bill. It therefore requires extraordinary sensitivity on the part of members of the Inquiry Committee. The Bill provides some criteria for the appointment of members but is lacking on the process by which such appointments will be made. Again, it seems that appointments are heavily weighted towards the Minister of the day without an appropriate process counterbalance which ensures that members of the Inquiry enjoy the confidence of a wider range of the Aboriginal and Torres Strait Island Nations, communities, and individuals. Without this confidence the inquiry will encounter great suspicion and perhaps lack of participation.

Division 3 deals with conduct of inquiries

Subdivision 72 deals with Procedures

- We sincerely hope that the various guidelines mentioned under 72 (2) are developed in such a way as to meet the concerns raised in our previous point.

Subdivision 3 deal with giving documents and other things to Inquiry

- We note from the Explanatory Memorandum that Clause 80 allows the Inquiry to require a government entity to produce documents or make written submissions to assist the Inquiry in performing its functions. Moreover the government entity must comply with the production notice within a reasonable period. However, the government entity is not required and may refuse to provide the documents if certain provisions apply, as set out in clause 83. However, we ask that in the event that a government entity refuses to provide documentation what oversight will there be to ensure that the refusal is properly based on the criteria for exceptions as set out in the Bill?
- We further note that there does not appear to be any clause or platform for compulsion of documentation from nongovernment entities. We raise this point because many Church based institutions were responsible for a great deal of harm in both missionary activities and in the way in which their Institutions were run. We are mindful that many of our children and our Ancestors were forcibly detained in non-government institutions and subject to harmful and at times appalling practices. We remind the Committee that nearly all these institutions were authorised by legislation from the Queensland Parliament and children in particular could only be placed in institutions with the authority of the State. Therefore it seems to us that not having some mechanism which compels the production of documentation held by these nongovernment entities is a significant flaw for the Inquiry. We believe amendments should be made to the Bill which allows for a compulsory mechanism for documents in the event that nongovernment entities are reluctant to produce such. If real history is to be told, it is not simply a matter for Aboriginal and Torres Strait Islander Peoples, Queensland Government entities but for all who were involved in crafting the history of these lands we now collectively call Queensland. It should not be optional for nongovernment entities to withhold important testimony and documentation.

General Comments

Communication and information

- In our submission we have repeatedly expressed concern about information and communication flows. While recognising the work of previous committees we believe there is significant room for improvement in communicating not only with Aboriginal and Torres Strait Islander Nations and Communities but with the broader society. There is a danger that those living in a bubble can make all sorts of assumptions about the degree to which their work has been communicated and understood by a wider audience. We believe there is significant room for improvement and we think particular attention should be given to broad ranged media strategies to ensure that the work of the Institute and Inquiry is much better known. Your committee should note that not once has our Wardingarri Corporation received information from any of the relevant committees and not once from the Treaty Office.

Balance of power


- We have drawn attention to what appears to be a disparity in the balance of power between the Minister and the broader Aboriginal and Torres Strait Islander Nations and Communities. We have been around long enough to know that goodwill from one government can be easily displaced by another government. Even if, and when passed, there is nothing in the proposed Bill that prevents political appointments being made or indeed wholesale and significant dilution of the intent of the legislation. We refer to our previously mentioned caution and suspicions because we have witnessed the overturning of legislation on many occasions and, sad to say, even in the State of Queensland a recent overturning of provisions of the Queensland Human Rights Act.

Timelines and budgets

- We believe that many of the timelines set are not achievable. This is particularly so if respect is given to cultural traditions and to the enormity of the tasks ahead. While the 10 year budget of \$300 million is welcomed it is very difficult to see how this is sufficient particularly taking into account the necessity to prepare our Aboriginal and Torres Strait Islander Nations and Communities for the daunting task of negotiating treaties and truth telling.

Notwithstanding our misgivings we intend to enter into this process in good faith believing the commitments from Government for a shared partnership and a desire to provide our children with the real history of the lands which are now collectively called Queensland.

Yours


Auntie Heather Tobane
Chairperson
Iman Wardingarra Aboriginal Corporation

