

## Path to Treaty Bill 2023

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**Submitted by:** ANTAR (National), Australian Lawyers Alliance, ANTaR QLD

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# ANTAR



## Submission: Path to Treaty Bill 2023 (Queensland)

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**ANTAR and the ALA are proud to acknowledge and pay our respects  
to First Nations Peoples as the traditional owners  
of the lands on which we work across the continent.**

# About ANTAR

**ANTAR is a national advocacy organisation working for Justice, Rights and Respect for Australia's First Nations Peoples. We do this primarily through campaigns, advocacy, and lobbying.**

ANTAR is working to mobilise Australians to vote YES at the referendum for a First Nations Voice to Parliament enshrined in the Constitution, and for this to be complemented with a Makarrata Commission to drive agreement making and truth-telling processes across Australia.

We also engage in national advocacy across various policy and social justice issues affecting Aboriginal and Torres Strait Islander communities, including cultural heritage protection; justice reinvestment, over-incarceration and raising the age of criminal responsibility; anti-racism campaigns, native title and land rights, and closing the life equality gap.

ANTAR is a foundational member of both the Close the Gap Campaign and Change the Record Campaign Steering Committee, and an organisational and executive committee member of Just Reinvest NSW. ANTAR has been working with Aboriginal and Torres Strait Islander communities, organisations and leaders on rights and reconciliation issues since 1997. ANTAR is a non-government, not-for-profit, independently funded and community-based organisation.

## About the ALA

**The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.**

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia, including a large and active membership base in Queensland. More information about us is available on our website.<sup>1</sup>

The ALA office is located on the land of the Gadigal of the Eora Nation.

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<sup>1</sup> [www.lawyersalliance.com.au](http://www.lawyersalliance.com.au).

**“We’ve got to empower communities to take control of their treaties. We don’t even know what they are going to put in their treaties, that’s got to emerge over time ... There’s no deadline, we just need to take time and take people with us.”**

Mick Gooda, Ghungalu man, Treaty advancement co-chair and former Social Justice Commissioner. <sup>2</sup>

## Introduction

Thank you for the opportunity to provide comments to inform the Queensland Parliament’s Community Support and Services Committee (‘Committee’) review of the proposed Path to Treaty Bill 2023 (Qld) (‘Path to Treaty Bill’, or ‘Bill’).

ANTAR (National), ANTAR Queensland and the Australian Lawyers Alliance (ALA) have all contributed to this submission and we welcome any further opportunity to engage with the Committee or the Queensland Parliament regarding this very important Bill.

Our organisations have welcomed the Queensland Labor Government’s intention to explore and pursue a Treaty process with Queensland’s First Nations peoples at the time of, and since, former Deputy Premier Jackie Trad’s announcement about the ‘Tracks to Treaty’ process in July 2019.<sup>3</sup> The subsequent work of the Treaty Working Group, the Eminent Panel and Treaty Advancement Committee, along with the establishment of a \$300 million Path to Treaty fund to support the process, has been overall a positive progression.

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<sup>2</sup> Joe Hinchliffe, ‘Queensland to progress on ‘historic’ Indigenous treaty while pledging new crackdown on youth crime,’ *The Guardian* (online, 15 February 2023) <<https://www.theguardian.com/australia-news/2023/feb/15/queensland-to-progress-on-historic-indigenous-treaty-while-pledging-new-crackdown-on-youth>>.

<sup>3</sup> See: ANTAR QLD, *Treaty in Queensland* (Factsheet, 2022) <<https://antar.org.au/wp-content/uploads/2022/04/Treaty-in-QLD-Factsheet.pdf>>; Australian Lawyers Alliance, ‘Queensland First Nations treaty welcome: will help fight injustice’ (Media release, 16 August 2022) <<https://www.lawyersalliance.com.au/news/queensland-first-nations-treaty-welcome-will-help-fight-injustice>>.

We now commend the Palaszczuk Labor Government on taking the next step, following the report of the Treaty Advancement Committee and its 22 recommendations for the Path to Treaty and the essential and complementary work of a Truth-telling and healing process for Queensland.

It is our view that, while there will be careful political calculations within Government in relation to how to progress this agenda within the state election cycle and embed the process as early as possible, the proposed consultation process must not be rushed. Further, treaty and truth-telling processes will need adequate resourcing to ensure the principles of Free, Prior and Informed Consent (FPIC) are honoured. The whole process must be considered 'good faith' best practice and take the opportunity to support Aboriginal and Torres Strait Islander peoples nation-building throughout.

The public consultation processes have, in our view, not been adequate to date and should be mapped out in partnership with key First Nations stakeholders across communities. The communication of the process must be transparent and supported by a well resourced strategy that ensures wide reach across Queensland. The very limited time given by this Committee for public submissions on the proposed Bill is another example of a rushed process and follows the concerning delay of the public release of the Treaty Advancement Committee Report by the Government and its subsequent response.

Furthermore, the role and visibility of the Government's Path to Treaty Office has been poor. The community should have better understanding and access to the Government body that is supporting its Path to Treaty work.

The genuine ambition of the Palaszczuk Labor Government to proceed with a treaty process between the State and the First Nations peoples across Queensland should not be undermined or diminished by an inclination toward rushed or closed processes.

ANTAR (National), ANTaR Queensland and the ALA wish to emphasise the importance of these consultation processes and the bodies established by this

Bill, once it passes Queensland Parliament, being both culturally-safe and accessible in all respects. That includes:

- the opportunity for an individual or organisation to make a submission to or appearance at a hearing/inquiry through various media, such as a written submission, audio/video recording, artwork or artefact;<sup>4</sup>
- the need for all activities of the proposed First Nations Treaty Institute and the Truth-telling and Healing Inquiry to be underpinned by a comprehensive public information campaign program to ensure the work of both bodies is accessible and the program of work (engagements, consultations, hearings) have every opportunity to be known in advance;
- all First Nations languages being welcome at consultations and hearings, with resources offered to provide interpreters when requested;
- physical spaces being accessible for those living with a disability;
- online participation being offered for those who cannot attend a consultation or hearing in person; and
- financial support being provided for those who need to travel for consultations or hearings, miss out on work/education for the duration of their time at a consultation or hearing, and for those who need to arrange care for children, relatives or others in their care for the duration of their time at a consultation or hearing.

Our organisations also agree on the importance of engaging with the non-Indigenous community across Queensland. Future consultation and public education processes must have a strategy for strong and positive engagement for all Queenslanders, so that there is broad support for the vision and opportunities of Treaties between the First Nations peoples and the State on behalf of their fellow Queenslanders.

Finally, this process must be connected and consistent with commitments under the Closing the Gap Framework. Good faith treaty negotiations must also not be undermined by the Queensland Government pursuing policies that are

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<sup>4</sup> See options offered by the Yoorrook Justice Commission: 'How can I tell my truth?'; *FAQs* (Web Page, 2023) <<https://yoorrookjusticecommission.org.au/faqs/#truth>>.

detrimental to or that disproportionately affect Aboriginal and Torres Strait Islander peoples, including youth.<sup>5</sup>

## The First Nations Treaty Institute

ANTAR (National), ANTaR Queensland and the ALA are pleased to see the pursuit of the First Nations Treaty Institute ('Institute'), including the Treaty Institute Council ('Institute Council'), through this Path to Treaty Bill and the honouring of the recommendations made by the Treaty Advancement Committee and, before that, the Eminent Panel. If this Institute is designed and established according to the priorities of Aboriginal and Torres Strait Islander peoples from across Queensland, it has the potential to be a strong institutional organ in support of self-determination. Further, it offers a way for the Queensland Government to adhere to the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), as the Queensland Government has stated it intends to do.<sup>6</sup>

We welcome that the Bill intends the Institute Council to be a statutory body, independent from Government.<sup>7</sup> We point to comparative entity structures like the First Peoples' Assembly of Victoria to ensure good governance and true independence from Government.

In this section of our submission, ANTAR (National), ANTaR Queensland and the ALA will raise a number of points regarding the proposed Institute for the Committee's consideration.

### 1. Selection of members of the Institute Council

We note the Bill intends for the Institute's Council to be initially selected by appointment of the "Governor in Council on the recommendation of the

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<sup>5</sup> See, e.g., Strengthening Community Safety Bill 2023 (Qld).

<sup>6</sup> Path to Treaty Bill 2023 (Qld) cl 6(1)(b).

<sup>7</sup> Path to Treaty Bill 2023 (Qld) cl 11, 12 and 18.



Minister”.<sup>8</sup> ANTAR (National), ANTaR Queensland and the ALA recommend that, beyond a transitional phase that establishes the Institute, the entity should (via the consultation process) decide how to determine future Council membership on the basis of First Nations self-determination. This should include selection by First Nations communities on the basis of their own governance processes.

Further, the Bill suggests consideration should be given to representing Aboriginal and Torres Strait Islander gender diversity.<sup>9</sup> ANTAR (National), ANTaR Queensland and the ALA contend that explicit guidelines for the inaugural Institute Council around diversity of membership must be developed after consultations with First Nations communities on this fundamental issue. The selection process must be open and transparent.

## **2. Treaty Institute Council and members’ performance of duties and functions**

The Bill intends that the Treaty Institute Council and its members must act independently and in the public interest when fulfilling their duties and functions, “having particular regard to the interests of Aboriginal peoples and Torres Strait Islander peoples”.<sup>10</sup> ANTAR (National), ANTaR Queensland and the ALA contend that “particular regard” should be defined to ensure that the interests and rights of Aboriginal and Torres Strait Islander peoples are properly regarded by the Treaty Institute Council and its members in all processes, decisions and actions.

## **3. Engagement plan for non-Indigenous Queenslanders**

Throughout the consultation process and beyond, all Queenslanders need the opportunity to feel part of the process, to understand the importance for all

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<sup>8</sup> Path to Treaty Bill 2023 (Qld) subcl 19(2).

<sup>9</sup> Path to Treaty Bill 2023 (Qld) subcl 19(4).

<sup>10</sup> Path to Treaty Bill 2023 (Qld) cl 18 and 24.

peoples and particularly the importance to the First Nations peoples of Queensland. This should be seen as a State-building moment of reconciliation and a positive opportunity for progress.

We think there are important lessons to be learnt from the Victorian process and experience in engaging and educating non-Indigenous Victorians on the reasons for Treaty and Truth-telling. The 'Deadly Questions' campaign and resource produced in the early stages of the Treaty engagement process was a successful and novel way of addressing public concerns and building broader support for the reform of Treaty.<sup>11</sup>

#### **4. The role of Path to Treaty Office.**

The ongoing role of the Path to Treaty Office should be articulated in the Bill, if it is intended to continue as a hub for government work and coordination. To date, the Path to Treaty Office has not been particularly visible or reachable and it needs to be a transparent resource or link to Government work on the treaty process.

If the Path to Treaty Office is expected to continue, the following questions should be applied: how will it interact with the Institute and the Inquiry? How will it improve its visibility and communications? How will it add value to the treaty process?

#### **5. The relationship between the Institute and the Inquiry**

The Bill does not provide any direct links between the Institute and the Inquiry. ANTAR (National), ANTAR Queensland and the ALA strongly recommend that a clearly defined relationship between the two entities should be established in the Bill. As in Victoria where the First Peoples' Assembly and the Yoorrook Justice Commission are linked through commissioning and reporting

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<sup>11</sup> See: Department of Premier and Cabinet, Victoria State Government, Deadly Questions (Web Page, 2018) <<https://deadlyquestions.vic.gov.au>>.

requirements, the Institute should be informed by the work of the Inquiry and should be the other key stakeholder named by the Bill (other than the Minister) for reporting purposes.<sup>12</sup>

Any Treaty work must be informed by the work of the Inquiry and the Institute's Council should play a role in articulating areas of inquiry for the Inquiry to explore on its behalf, beyond what is initially commissioned.

## **6. Resourcing First Nations communities**

The proposed annual budget of \$10 million seems on the surface a reasonable operating budget for the Institute but establishment/set up capital should also be provided for up front. The annual budget should consider similar bodies (such as the First Peoples' Assembly of Victoria)<sup>13</sup> in its final estimated annual funding. The work should not be defined by the budget but rather the reverse. As one of the largest jurisdictions with a decentralised population base, Queensland will have particular constraints and challenges that will require specific budgetary considerations to support the necessary ongoing engagement and consultations processes.

A further bucket of funding should be explicit in the Bill for a thorough consultation process that goes to supporting the engagement of First Nations communities across the State.

According to 2021 Census Data provided by the Australian Bureau of Statistics, there are nearly 240,000 people who identify as Aboriginal and Torres Strait Islander in Queensland.<sup>14</sup> The Bill's Explanatory Notes acknowledge that more than 1,000 Queenslanders participated in the face to face engagements across the 24 locations of the Eminent Panel and Treaty in 2019.<sup>15</sup>

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<sup>12</sup> Path to Treaty Bill 2023 (Qld) cl 66, 87 and 88.

<sup>13</sup> See: First Peoples' Assembly of Victoria, *We are the First Peoples' Assembly* (Web Page, 2022) <<https://www.firstpeoplesvic.org/the-assembly>>.

<sup>14</sup> Australian Bureau of Statistics, *Queensland: Aboriginal and Torres Strait Islander population summary* (1 July 2022) <<https://www.abs.gov.au/articles/queensland-aboriginal-and-torres-strait-islander-population-summary>>.

<sup>15</sup> Explanatory Notes, Path to Treaty Bill 2023 (Qld) 12.

This represents less than half of one percent of the First Nations population and must be far more extensive. If the onus is passing from the Government to the Institute to deliver meaningful consultations with a significant portion of the Aboriginal and Torres Strait Islander community in Queensland then this will require investment and strategy to match.

The Institute should have oversight and control over the \$300 million Path to Treaty Fund. Secondly, a review of this fund should be undertaken in partnership between the Institute and the QLD Government to determine a) what its quantum should be, and b) what top up funding might be required to ensure the Fund's sustainability as a source of residual funding for the Institute and the development of the Treaty Framework and future negotiations. This would be consistent with a commitment to self-determination for First Nations peoples of Queensland. As the journey towards Treaty progresses, consideration will need to be given to adequately resourcing First Nations and communities with legal, political and negotiation assistance and advice, as well as the means to deliberate internally as needed.

## **7. Responsible to First Nations Queenslanders**

While the Bill is clear that the Institute will not represent the State and will be independent of Government to perform its function with autonomy,<sup>16</sup> the Bill should go further in making explicit that the Institute Council is established to serve the interests of the First Nations peoples of Queensland in the treaty process. Again, this would be a clearer alignment with the application of self-determination. In this context it is critically important that the appointment process is clear and endorsed by First Nations people around the State. If the process is believed to be driven by Government, the Institute's independence will be seen as flawed.

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<sup>16</sup> Path to Treaty Bill 2023 (Qld) cl 11 and 18.

# The Truth-telling and Healing Inquiry

The remainder of this submission will address ANTAR (National), ANTAR Queensland and the ALA's analysis of the proposed Truth-telling and Healing Inquiry ('Inquiry') for the Committee's consideration.

## 8. Terms of Reference to the Inquiry

The Bill details that the "Minister must, within 1 month after the commencement, prepare the terms of reference for the Inquiry".<sup>17</sup> ANTAR (National), ANTAR Queensland and the ALA consider that the Terms of Reference must be developed in consultation with and/or in reference to previous consultations, written submissions and resources from First Nations communities and their representatives.

If the scope of the Inquiry does not properly reflect what First Nations Queenslanders need from truth-telling and healing processes, then its impact and operations will be fraught.

## 9. The Term of the Inquiry

The Bill states that the Inquiry must be established for a term of not more than three years,<sup>18</sup> although grounds for extension are given.<sup>19</sup> However, we consider that three years as an initial term is too short from the outset. If we consider the complexity of truth-telling and healing inquiries in a wide range of other circumstances, internationally and within Australia, five years offers a more realistic initial term. The Yoorrook Justice Commission offers a case in point, adopting a 5 year term as a minimum to be reviewed in year four to determine if more time needed.

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<sup>17</sup> Path to Treaty Bill 2023 (Qld) subcl 61(1).

<sup>18</sup> Path to Treaty Bill 2023 (Qld) subcl 64(2).

<sup>19</sup> Path to Treaty Bill 2023 (Qld) subcl 64(3)(a)–(b).

## 10. Properly resourcing Community Engagement

Like the funding requirements of the Institute, the budget of the Inquiry must be adequate to facilitate a thorough consultation and community engagement process. For the Inquiry (and unlike the detail provided for the Institute), there is no comment on funding expectation in the Bill's Explanatory Notes.

Given the demographic particulars of Queensland (large, decentralised) and the length of the Inquiry, the supports needed for a trauma-informed and culturally safe process and the structures necessary to hold and protect the evidence provided, a significant investment by the Queensland Government will be required.

It is critically important to the integrity of the Inquiry process that there is no perception that the Inquiry is being rushed or seen as a shallow process. It is reasonable to expect that the Inquiry will be embedded with communities for days and weeks at a time with proper follow up.

## 11. Inquiry members

The Bill envisages that the Governor in Council appoint all five members of the Inquiry on the recommendation of the Minister,<sup>20</sup> and that the “majority of the members are Aboriginal persons or Torres Strait Islander persons”.<sup>21</sup>

ANTAR (National), ANTAR Queensland and the ALA contend that – with regard to the function of the Inquiry being to facilitate truth-telling, healing, research and documentation on the effects of colonisation on Aboriginal and Torres Strait Islander peoples – all members of this Inquiry should be Aboriginal and Torres Strait Islander peoples. Further, the selection process must be open and transparent, designed by the Queensland Government in consultation with First Nations’ representatives.<sup>22</sup>

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<sup>20</sup> Path to Treaty Bill 2023 (Qld) subcl 67(2)–(4).

<sup>21</sup> Path to Treaty Bill 2023 (Qld) subcl 67(3).

<sup>22</sup> See, eg, the Yoorrook Justice Commission’s selection process of its Commissioners: Yoorrook Justice Commission, *Yoorrook with Purpose* (Interim Report, June 2022) 3 <<https://yoorrookjusticecommission.org.au/wp-content/uploads/2022/07/Yoorrook-Justice-Commission-Interim-Report.pdf>>.

## **12. Inquiry members' performance of their duties and functions**

The Bill intends that Inquiry members must act independently and in the public interest when fulfilling their duties and functions, "having particular regard to the interests of Aboriginal peoples and Torres Strait Islander peoples".<sup>23</sup> ANTAR (National), ANTAR Queensland and the ALA contend that "particular regard" should be defined to ensure that the interests and rights of Aboriginal and Torres Strait Islander peoples are properly regarded and included in all processes, decisions and actions.

## **13. The Powers of Inquiry**

ANTAR (National), ANTAR Queensland and the ALA note the following regarding the Inquiry's powers to compel attendance and evidence:

"The Inquiry has elements of a Commission of Inquiry but is customised to respond to the requirements of Aboriginal and Torres Strait Islander peoples by adopting a culturally appropriate and non-legalistic approach. There will be limited compulsion powers directed towards the participation of and production of information or documents from government agencies only. This model intends to encourage voluntary participation and sharing of histories, stories, experiences and truths from Aboriginal and Torres Strait Islander peoples and non-Indigenous Queenslanders alike."<sup>24</sup>

While we appreciate the above, we contend that the Inquiry should have the powers of a Queensland Commission of Inquiry. The proposed limited compulsion powers for the Inquiry, which are restricted to government agencies only, are inadequate. This would preclude the Inquiry from compelling evidence, including records and documents, from organisations, religious entities and charities.

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<sup>23</sup> Path to Treaty Bill 2023 (Qld) cl 71.

<sup>24</sup> Explanatory Notes, Path to Treaty Bill 2023 (Qld) 4.

A Commission of Inquiry can certainly be conducted in ways that are culturally-safe and the powers afforded to a Commission of Inquiry – as per Queensland’s *Commissions of Inquiry Act 1950* – will ensure the Inquiry can adduce a broad range of evidence that First Nations’ people might identify as important for their truth-telling and healing processes.

We note that Victoria’s Yoorrook Justice Commission was established with Royal Commission powers,<sup>25</sup> but employs culturally-safe, non-legalistic methods as part of its truth-telling and healing processes (such as the facilitation of yarning circles).<sup>26</sup> As such, we refer the Committee to further review and replicate the powers of the Yoorrook Justice Commission for this Inquiry.

#### **14. Responsible to First Nations Queenslanders**

As discussed already throughout this submission, the Inquiry must ultimately serve and be responsible to First Nations peoples in Queensland. Every aspect of the Inquiry must consider cultural practice and protocols, community governance and how best to honour and protect the contributions of Aboriginal and Torres Strait Islander Queenslanders.

#### **15. Reporting responsibilities and next steps after the Inquiry**

##### Interim reporting

The Inquiry has a responsibility, as proposed by the Bill, to “keep the Minister reasonably informed about the functions performed and activities carried out by the Inquiry”.<sup>27</sup>

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<sup>25</sup> Yoorrook Justice Commission, *Yoorrook’s Letters Patent* (12 May 2021) 1 <<https://yoorrookjusticecommission.org.au/key-documents>>.

<sup>26</sup> Yoorrook Justice Commission, ‘How can I tell my truth?’, *FAQs* (Web Page, 2023) <<https://yoorrookjusticecommission.org.au/faqs/#truth>>.

<sup>27</sup> Path to Treaty Bill 2023 (Qld) cl 87.



ANTAR (National), ANTaR Queensland and the ALA believe that there should be an interim report provided by the Inquiry, 18 months to two years (at most) into its operations. This will:

- provide important updates on the Inquiry's progress and initial findings for First Nations Queenslanders, non-First Nations Queenslanders, the Government and other stakeholders; and
- signal to the Minister and the Queensland Government what kinds of systemic, legislative and policy-based reforms are needed. The Queensland Government can then opt to take more immediate action, where appropriate, on more urgent matters. Remaining reforms will surely be actioned more expediently at the Inquiry's conclusion if the Queensland Government has an interim report from the Inquiry.

We note that the Letters of Patent that established Victoria's Yoorrook Justice Commission required the Yoorrook Justice Commission to provide an interim report, which was presented to the Governor of Victoria and the co-chairs of the First Peoples' Assembly of Victoria on 30 June 2022.<sup>28</sup>

### The Inquiry's final report

We note that at the Inquiry's conclusion, the Inquiry's final written report will be presented to the Minister,<sup>29</sup> who "must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report",<sup>30</sup> and then "must, as soon as reasonably practicable after tabling the report, prepare a response to the report and give the response to the Premier".<sup>31</sup> ANTAR (National), ANTaR Queensland and the ALA contend that the latter timeframe of "as soon as reasonably practicable after tabling the report" is too vague and must be quantified before this Bill passes.

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<sup>28</sup> See: Yoorrook Justice Commission, *Yoorrook with Purpose* (Interim Report, June 2022) <<https://yoorrookjusticecommission.org.au/wp-content/uploads/2022/07/Yoorrook-Justice-Commission-Interim-Report.pdf>>.

<sup>29</sup> Path to Treaty Bill 2023 (Qld) subcl 88(1).

<sup>30</sup> Path to Treaty Bill 2023 (Qld) subcl 88(3).

<sup>31</sup> Path to Treaty Bill 2023 (Qld) subcl 88(4).

The reforms recommended by the Inquiry will undoubtedly be significant, urgent and critical to all Queenslanders, especially First Nations peoples. As such, there must be certainty as to when the Queensland Government will respond to and action those recommendations.

## **Conclusion**

ANTAR (National), ANTAR Queensland and the Australian Lawyers Alliance (ALA) are pleased to see the pursuit of the First Nations Treaty Institute and the Truth-telling and Healing Inquiry through the Path to Treaty Bill 2023 (Qld).

ANTAR (National), ANTAR Queensland and the ALA are available to provide further assistance to the Committee on the issues raised in this submission.

This is an important step for Queensland and its relationship with the First Nations peoples of the State. Our points covering a) the responsibility to the Aboriginal and Torres Strait Islander peoples of Queensland, b) the need for proper resourcing and c) ensuring that processes are consistent with cultural protocols are all necessary (at a minimum) to ensure the Path to Treaty in Queensland fulfils the promise of a better future for all Queenslanders together.