

Path to Treaty Bill 2023

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24 March 2023

Our ref: LP:MC

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

By email: CSSC@parliament.qld.gov.au

Dear Madam/Sir

Path to Treaty Bill 2023 – Community Support and Services Committee

Thank you for the opportunity to provide a submission on the Path to Treaty 2023 Bill (**the Bill**). We would also like to extend our appreciation to the Committee for providing QLS an extension for our submission.

Queensland Law Society (**QLS**) is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

QLS is committed to reconciliation and recognising the perspectives of Aboriginal Peoples and Torres Strait Islander Peoples, including First Nations Lawyers.

This response has been compiled with the assistance of members and guests of the QLS First Nations Legal Policy Committee and Human Rights and Public Law Committee.

The QLS is pleased to see the government progress through its commitment towards advancing reconciliation in a meaningful and substantive way with First Nations peoples and community in Queensland. QLS supports the Path to Treaty Bill in principle and provides the following comments for the Committee's consideration.

Background

QLS notes that the objectives of the Bill are to establish:

- a First Nations Treaty Institute to support Aboriginal and Torres Strait Islander peoples to develop and provide a framework for Aboriginal and Torres Strait Islander peoples to prepare for and then commence treaty negotiations with the Queensland Government, and

Path to Treaty in Queensland Bill 2023

- a Truth-telling and Healing Inquiry to inquire into, and report on, the effects of colonisation on Aboriginal and Torres Strait Islander peoples.

Other submissions to the inquiry

QLS refers to submissions made by the Queensland Human Rights Commission (QHRC) in response to the Bill. In particular, QLS agrees that in order to achieve the desired outcomes of the treaty process and truth telling, there must be human rights principles embedded in its processes.¹

We also endorse submissions made by the QHRC with respect to:

- *Clarification of whether the single Code of Conduct for the Queensland Public Service is to apply to the Treaty Institute, having regard to whether a bespoke, co-designed code of conduct would better achieve the goals of independence, cultural rights and self-determination for the Treaty Institute. (clause 12)*
- *That persons who have been convicted of indictable offences (aside from spent convictions) are not automatically disqualified from holding Council or senior executive officer roles on the Treaty Institute, but rather that criminal histories are required to be considered as one aspect of weighing up suitability for the role. (clause 55)*
- *Reconsideration of the 3 year timeframe for formal truth-telling, even with the possibility of extension, having regard to Queensland's geographical size, two distinct cultural groups, cultural safety of participants, and the need to afford time for First Nations groups to prepare and consider how they wish to participate in truth telling. (clause 64)*
- *Strengthening the Bill to support and give priority to providing culturally appropriate professional services to address experiences of stress and psychological trauma associated with the Inquiry process, and independent advocacy to facilitate broad and meaningful participation. (clause 72)*
- *Increase powers of the Inquiry to compel information and attendance from any person, or at a minimum to include local governments, the Queensland Police Service, missionaries and other faith-based service providers, and other organisations that act or have acted on behalf of the State, to ensure the effectiveness and cultural safety of the truth telling and healing process. (clauses 75, 80, 81, 85)*

Previous consultation phases

On 13 September 2019, Deputy Premier, Treasurer and Minister for Aboriginal and Torres Strait Islander Partnerships, Jackie Trad, released the Path to Treaty in Queensland Consultation paper (**the Consultation Paper**). QLS provided a submission to the Consultation Paper.

We reiterate some of the issues raised in that submission which should be upheld for substantive outcomes in the Treaty process.

¹ Queensland Human Rights Commission, Submission No 6 to Community Support and Services Committee, *Path to Treaty Bill 2023* (16 March 2023) 2.

Briefly, these include:

- There must be sufficient timeframes to reflect culturally respectful consultation and First Nations peoples' ways of decision making. There is a risk that rushing any stage of these processes will be harmful to community trust and to the process more broadly;
- First Nations cultural frameworks should be utilised as a primary tool, including First Nations political and legal methods or standards adopted, with the standard government procedures supporting the cultural frameworks;
- The need for genuine commitment to addressing ongoing discrimination and injustices perpetuated by current government policy and legislation;
- The processes must be sufficiently supported to ensure the cultural and psychological safety of First Nations contributors whether they are staff, community members or otherwise.

Limited timeframes

The Truth-telling and Healing Inquiry will be established for a period of 3 years, with the Minister having discretion to extend this period either by, on notice from the inquiry or on their own initiative. Despite the Treaty Advancement Committees final report, recommendation 14:

The Committee believes that with sufficient engagement and support from the Queensland Government to access existing work and research to support the chronicling of colonisation of Queensland, along with adequate financial backing to conduct its inquiry, a three-year timeframe is appropriate.²

We do not think that this timeframe is sufficient, nor is it culturally appropriate that the Minister has this discretion, given the impacts of colonisation, and the historical and continued impact of failed Indigenous Australian policies on First Nations. There is a need for culturally sufficient timeframes, that discretion should be placed on or with the Treaty Institute.

The members with whom we have consulted have advised that the difficulty with such limited timeframes being attached to these processes is that they do not recognise nor respect First Nations ways of decision making. Consistently, truncated consultation schedules also fail to attract the depth of consideration required and are less likely to achieve the desired outcomes, particularly in consideration of the complex history of these issues.

We note that the Treaty process in Victoria commenced with Self-Determination Forums in April 2016, with consultations taking place with "Aboriginal Elders and community leaders from Horsham, Bairnsdale, Shepparton and Mildura."³ This process of consultation was developed over several years and, for this reason, was culturally practicable for Victoria. Moreover, and of

² Treaty Advancement Committee Report (Report, October 2021).

³ ANTaR Victoria, 'The Treaty Process in Victoria', *Together, we are ANTaR Victoria* (Web Page) <<https://antarvictoria.org.au/treaty-process>>.

critical importance, from its inception, the process involved input from those First Nations peoples from each region about the delivery and context of the process.

Given the timeframe in Victoria through their process, allowed sufficient consideration from First Nations groups. In contrast, and as mentioned above, Queensland's geographical size is much larger, with two distinct cultural groups and would necessitate a period that is culturally practicable and will require a process with no fixed timeline or a time period that weighs on the discretion of a Minister to achieve the desired outcomes.

Flexibility in consultation

QLS is also advised that government decision making at times lack the depth of understanding and the cultural competency required to truly deliver desired outcomes in the community. Some concern is raised in relation to having cultural due diligence as to the engagement with the appropriate Elders or community leaders. Community Elders and leaders may have no direct connection to the law as such but can enhance the depth of participation within the community if required and more appropriately convey community concerns.

Appropriate regard must be had for the distinctive cultures, beliefs and languages of First Nations peoples around the state. Academic and pragmatic understanding and implementation of suitable elements of each alternative "way of doing, being, interpreting and valuing" must be adhered to. This means keeping the Treaty Institute 'Independent' from government and its agencies. Allow First Nations to advance and thrive through this treaty process, give time for community to address issues as they arise, and respect their way of doing things. As previously stated, we understand the State of Victoria process included 'treaty circles', face to face consultations and the online 'message stick'.⁴ This facilitated a range of considered options for community engagement.

Cultural safety

In our view, no truth telling will be achieved where the processes do not support cultural and psychological safety for those First Nations contributors (both governmental staff and community participants). Consideration should also be given to the availability of appropriately resourced trauma-informed services and trauma-specific care for participants as needed.

Resourcing

We support the establishment of the \$300 million Path to Treaty Fund (**the Fund**) from the Queensland Government's 15 June 2021 Budget. The government has guaranteed a minimum annual allocation of \$10 million from the Fund that will be made available to support the Institute to maintain the Path to Treaty process for the duration of treaty-making.⁵

⁴ *Aboriginal Community Consultations on the Design of a Representative Body* (Report, June 2017).

⁵ Explanatory Notes, Path to Treaty Bill 2023 (Qld); *Queensland Government Response to the Treaty Advancement Committee Report* (Report, 2022).

The allocation of funds to support the Institute is inadequate and is limited. We note that the Fund will allocate funds for the functions of the Institute, including treaty-related activities, healing activities, community engagement and research and advisory functions.

We are conscious that First Nations community members are constantly called on by government to provide time, knowledge and perspectives, often at great personal and financial cost to the individual and their family/community - for little or no compensation. This must be clarified whether contributors to the treaty process fall within the meaning of “key functions of the Path to Treaty”.

In addition, noting the substantial imbalance of power between any First Nations parties and the government, it is therefore a critical component to explore a Tribunal to mitigate any breaches or for mediation purposes, including to First Nations lawyers, and interpreters to provide independent and culturally appropriate legal advice and services.

Real commitments for change

Research published some five years ago continues to provide evidence of the unacceptable level of discriminatory views held by non-Indigenous peoples.⁶ These inherent attitudes and stereotypical beliefs toward First Nations peoples must be addressed. We commend the government’s commitment to removing outdated and discriminatory provisions of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*. Whilst acknowledging, more work can and needs to be done to eradicate discrimination, governments have an important role to play in this regard.

Community will likely want to see evidence of real commitment to government change – on legislation and policy. All current legislation, regulation or policy that unintentionally impacts First Nations peoples, whether direct or indirect should be addressed. Those commitments must extend beyond the Treaty making process to address systemic and structural barriers which continue to entrench the disadvantages faced by First Nations peoples.

A concerted effort is required to increase genuine First Nations experts to provide compensated contributions to Parliamentary Committees, legislative drafting bodies, public policy making, government departments including at Executive Director level. Government (current and future) and the Public Service will necessarily have their own distinct challenges to address.

We urge the Committee to ensure that consideration be given to the matters and concerns raised in this correspondence, especially in relation to consultation processes going forward. Consideration must be given to how community values wisdom, trust, responsibility and knowledgeable representation.

Building a relationship of trust will take genuine commitment and time. It is also essential that these policies and processes have bipartisan support so that they withstand changes of government and so that genuine and equitable recognition and change may come of this process in the longer term.

⁶ ‘Discrimination stops with you’, *Beyond Blue* (Web Page) <<https://www.beyondblue.org.au/who-does-it-affect/the-invisible-discriminator>>.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on [REDACTED].

Yours faithfully

[REDACTED]

President

6 April 2023

Our ref: [LP:MC]

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

By email: CSSC@parliament.qld.gov.au

Dear Madam/Sir

Supplementary Submission: Path to Treaty Bill 2023 – Community Support and Services Committee

Thank you for providing the transcript, and the opportunity to provide further feedback on the Path to Treaty Bill 2023 (**the Bill**). We refer to our appearance on Monday 27 March 2023, and provide this supplementary submission to further support the Committee.

In light of our appearance, we have had the opportunity to review the recording and read the transcripts kindly provided by Hansard. QLS supports the Bill in-principle, and we provide the following comments for the Committee's consideration in support of our appearance and our submission.

Executive Summary/Key Points:

Timeframes

We stated during our appearance, that:

"In relation to the three-year time frame, it is fair to say that we have some concerns in relation to this period being too long. Obviously, that will take place over an election cycle, and it does not institute and complete this target or objective within potentially a term of government, which means that it is subject to the scrutiny of, say, another government and another perspective".¹

We note the QLS submission states:

"We do not think that this timeframe is sufficient, nor is it culturally appropriate that the Minister has this discretion, given the impacts of colonisation, and the historical and continued impact of failed Indigenous Australian policies on First Nations. There is a

¹ 27 March 2023_Proof Public Hearing Brisbane – Inquiry into the Path to Treaty Bill 2023, p12.

need for culturally sufficient timeframes, that discretion should be placed on or with the Treaty Institute".²

We reaffirm that the three-year timeframe is insufficient, nor is it culturally appropriate to factor into account the impacts of colonisation.

We note, in Victoria three-years was initially a sufficient timeframe, however, the Yoorrook Justice Commission's truth process has now been extended for a further 12 months.³ In contrast, Queensland has its own unique and different experiences, cultures and the geographical area is much larger. This will require a considerable amount more time than Victoria to undertake this task in a culturally appropriate manner. In addition, we support the Queensland Human Rights Commissions position, that a reasonable timeframe should be at least five-years.⁴

Cultural framework

We were asked to provide examples of the context of cultural frameworks that could assist the committee.

A cultural framework is generally defined as:

'Culture refers to an ever-changing set of shared symbols, beliefs, and customs that shapes individual and/or group behaviour'⁵.

Therefore, a cultural framework is not rigid, as there are many diverse First Nations throughout the State. A cultural framework should underpin the thinking, the functions, and operations of the Institute and the Inquiry.

From the QLS perspective, we support cultural frameworks to be informed from a First Nations lens of Indigenous knowledges, beliefs and values.

With varying degrees of cultural beliefs and traditional systems, this framework must be informed from a local or regional context.

By way of background, a Reconciliation Action Plan (RAP) provides three themes to inform their structure, Relationships, Respect, and Opportunity. These themes provide a basic tool that assists organisations to engage with local First Nations people and community.

QLS has a Cultural Outreach Strategy (COS), which is underpinned by our cultural framework that is in line with the mission of the QLS. QLS approaches our Cultural footprint very broadly, that reflects the QLS mission and the various First Nations Lawyers, and the community in which we have the opportunity to engage.

Similarly, to a RAP, we set our own target that is relevant to the organisation and First Nations whom we represent. In addition, we have our own theme that sets the basis for our targets;

² QLS – Path to Treaty Bill 2023 – Community Support and Services Committee (Our ref: LP:MC), p3.

³ <https://nit.com.au/04-04-2023/5490/yoorrook-justice-commissions-quest-for-truth-extended-by-12-months>

⁴ Queensland Human Rights Submission, p5.

⁵ <https://australianstogether.org.au/discover-and-learn/our-cultures/culture-identity/>

Submission name

Advocate, Educate, Connect, Support, and Imbed. These targets are achievable and informed from our First Nations stakeholders and committee members.

Recommendations:

- Elders or community leaders guide and control the implementation of local structures;
- Any working group should work in tandem with community, rather than consultation, that reduces the sense of any power imbalance that may exist;
- Understand and know the culturally appropriate community members to engage.

Selection of members

We were asked to speak to the representation of the Institute, Council, and/or the Inquiry. It should be important to ensure that all members are included and heard. It may take multiple steps to achieve this, including;

- Our view is to limit the responsibility or the discretion of the Minister from having full or partial discretionary power to promote true partnership.
- There should be elected representatives from a local/regional basis (this may require the community to enrol and vote).
- We note – there are structures available for voting through Land Councils,⁶ and other bodies that require members to vote.
- Those elected to be regional/local representatives would then vote for their Council members (on the Treaty Institute), this would save time and reduce any cross overs or conflicts with members of the Council and the executive of the Institute. Giving power to First Nations.
- There would be no other way than for First Nations community to elect who they would want, otherwise it will fail and lose momentum, from lack of engagement or fall vulnerable to the whims of successive governments to keep deciding what's best for them.
- Similarly, to the State governments [Office of the Commissioner](#) (Meriba Omasker Kaziw Kazipa), however, the First Nations community should establish members to the Council, Institute and the inquiry to maintain its independence.

Resourcing

We were asked questions to address either through the Bill or the implementation phase, the compensation or remuneration for participants in the inquiry.

- In our submission, we expressed that we are conscious that First Nations community members are constantly called on by government to provide time, knowledge and

⁶ . <https://alc.org.au/lalc-elections/>

Submission name

perspectives, often at great personal and financial cost to the individual and their family/community - for little or no compensation. This must be clarified whether contributors to the treaty process fall within the meaning of “key functions of the Path to Treaty”.

- The allocation of funds to support the Institute is inadequate and is limited. We note that the Fund will allocate funds for the functions of the Institute, including treaty-related activities, healing activities, community engagement and research and advisory functions.
- In addition, noting the substantial imbalance of power between any First Nations parties and the government, it is therefore a critical component to explore a Tribunal to mitigate any breaches or for mediation purposes, including to First Nations lawyers, and interpreters to provide independent and culturally appropriate legal advice and services.
- A concerted effort is required to increase genuine First Nations experts to provide compensated contributions to Parliamentary Committees, legislative drafting bodies, public policy making, government departments including at Executive Director level. Government (current and future) and the Public Service will necessarily have their own distinct challenges to address.

Clause 55 – indictable offences

We were asked to comment on the Bill having regard to indictable offences. We provide the following observations and feedback to support our views to this supplementary submission. This question would be out of the Society’s remit to have any knowledge whether any Queensland public servant has an indictable offence.

Legislative Background

We note, with the benefit of hindsight, the *Public Service Act 2008 (Qld)*, section 181 provided, the “*requirement to give notice of charge or conviction for indictable offence...*”.

The *Public Service Act 2008 (Qld)* was repealed⁷ and superseded by the *Public Sector Act 2022 (Qld)*, on 1 March 2023.

The *Public Sector Act 2022 (Qld)* provides:

- a public sector employee must disclose to chief executive charge or conviction for indictable offence.⁸

Division 2 Criminal History

Section 50 Meaning of *relevant duty*

⁷ *Public Sector Act 2022 (Qld)*, section 289.

⁸ *Ibid*, s 73.

Submission name

- (1) A particular duty to be performed in a public sector entity is a **relevant duty** if the chief executive of the entity decides under the suitability directive that because of the nature of the duty, it may be necessary to have regard to the criminal history of a person engaged to perform the duty to ensure the person is suitable to perform the duty.⁹

The Institute and the Inquiry is unique for both First Nations people and the broader Queensland community. Importantly, Aboriginal and Torres Strait Islander Peoples have experienced detrimental and intergenerational effects of government policies and ways of doing things that have contributed to offending. Imposing measures on members of the Council, Institute or the Inquiry will not necessarily get the desired outcomes.

Its basis is to bring to light, the impacts of what colonization has had upon First Nations Peoples, and perhaps to the extent that colonization is a central component that underpins the social disadvantage experienced by First Nations offenders.

Relevantly, by way of example, section 9 of the *Penalties and Sentencing Act 1992 (Qld)*, provides that if an offender is an Aboriginal or Torres Strait Islander person, then submissions made by a representative of the community justice group in the offender's community that are relevant to sentencing the offender including, for example—

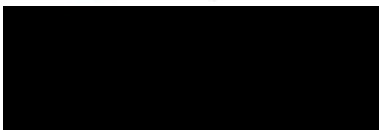
- (i) the offender's relationship to the offender's community; or
- (ii) any cultural considerations; or
- (iii) any considerations relating to programs and services established for offenders in which the community justice group participates.¹⁰

The essence of who should have discretion or the authority to have representative members on the Institute or Council, should be for the First Nations community at large.

We note, that if there is such limitation imposed on members of the Council, or the executive of the Institute, will consequently be detrimental to the functioning of the Institute, where particular members with the knowledge and experiences of the community be excluded from the outset.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on [REDACTED].

Yours faithfully



Chloë Kopilovic
President

⁹ Ibid, s 50(1).

¹⁰ *Penalties and Sentencing Act 1992 (Qld)*, s9(p).