

Path to Treaty Bill 2023

Submission No:	39
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Publication:	Making the submission and your name public
Attachments:	See attachment
Submitter Comments:	

Submission for the consideration of the Community Support and Services Committee

Path to Treaty Bill 2023

I have been strongly endorsing the commitment of the Queensland Government to undertake discussions on a Path to Treaty since 14 July 2019 and view the Path to Treaty Bill 2023 as an important steppingstone to further such aims as healing and reconciliation.

Pertaining to the matter under consideration, after reviewing the [Bill](#), its [Explanatory Notes](#), and all key documents such as the [Queensland Government Response to the Treaty Advancement Committee Report \(2022\)](#), I would like to pinpoint two aspects that I believe could be more explicitly addressed.

Reported and further explored below – if they can be of any help – the two proposals that I bring forth may be employed at the Committee’s discretion in any fora, or could simply be taken into consideration as part of the agenda of the First Nations Treaty Institute at its discretion:

- a) **developing a ‘bottom-up’ framework for assessing economic, social, cultural, and environmental outcomes in a manner that reflects First Nations’ own socially embedded understanding of such impacts and that can be communicated to non-First Nations peoples.**

The framework could be developed by the First Nation Treaty Institute, with implications for reporting on the findings of the Truth-telling and Healing Inquiry, and as part of a “data sovereignty of Aboriginal and Torres Strait Islander peoples”.

The framework may encourage successful Treaty (or Treaties) negotiations by enabling a shared understanding of how to interpret mainstream notions of economic, social, cultural, and environmental outcomes on terms that appeal to and empower First Nation communities.

- b) **a pathway for a shared approval or recommendation by both the Minister and Australian First Nation peoples - once their representative mechanisms and structures are in place – for the appointment of the Treaty Institute members.**

The current formulation of the Bill appears to consider such pathway as “recommendations contained in the inaugural report in relation to the appointment of a member to the Treaty Institute Council” (Part 2, Division 2, Subdivision 2, 19.3.4.b | page 18 lines 11-14).

In the current formulation of the Bill, it appears that the only appointment mechanism for a Treaty Institute Member is contained in Part 2, Division 1, Subdivision 2, 19.2 | page 17 lines 22-23: “a member must be appointed by the Governor in Council on the recommendation of the Minister”.

1. Framework for assessing economic, social, cultural, and environmental impacts.

Several *Path to Treaty Bill 2023* references such as 10 (Preamble), 5.b and 13.1.d appear to recognise the importance of developing a framework for

- Aboriginal peoples, Torres Strait Islander peoples and the State to enter into successful treaty negotiations and
- Assessing economic, social, cultural, and environmental impacts from colonisation and to measure benefits from the Path to Treaty.

Mainstream frameworks to measure and deliver beneficial outcomes, for example from mining operations in regional Australia, appear to have been yielding disappointing results from Indigenous, corporate, and state perspectives¹.

Some scholars suggest that one reason for such failures is that First Nation peoples' understandings of economic, social, and cultural benefits are not fully compatible with mainstream notions. That could be due to a different social fabric distinguishing Australian First Nations and non-First Nations peoples' value systems, which are complex, socially embedded, and ever-evolving concepts².

To overcome this issue, first, I would agree with the recommendation 5.2 within the Treaty Advancement Committee Report to assign to the First Nations Treaty Institute "powers to create and develop intellectual property and build the data sovereignty of Aboriginal and Torres Strait Islander peoples". Such recommendation appears neither to be expressly addressed in the Queensland Government Response to the Treaty Advancement Committee Report (2022), nor in Part 2, Division 2 of the Bill.

And second, I believe that it could be beneficial to empower Australian First Nation peoples to generate their interpretive frames³ linked to the impacts of colonisation and outcomes from the Path to Treaty process in a 'bottom-up' fashion and, hence, construct a framework that can communicate back to mainstream notions of economic, social, cultural, and environmental outcomes.

Decades of academic literature suggest that, if positive outcomes are sought from development or otherwise political efforts, such outcomes need to take place within the terms of the communities towards which such processes are directed.

¹ Altman, J. and Martin, D., 2009. Power, Culture, Economy (CAEPR 30): Indigenous Australians and Mining (p. 243). ANU Press

² Gill, N., 2005. Aboriginal pastoralism, social embeddedness, and cultural continuity in central Australia. *Society and Natural Resources*, 18(8), pp.699-714

³ Benford, R.D. and Snow, D.A., 2000. Framing processes and social movements: An overview and assessment. *Annual review of sociology*, 26(1), pp.611-639.

2. Pathway for a shared approval or recommendation by both the Minister and Australian First Nation peoples

The proposal 7.1 within the Treaty Advancement Committee Report reads: “Members of the First Nations Treaty Institute Council (the Institute Council) be Aboriginal and/or Torres Strait Islander persons directly appointed by First Nations representative mechanisms and structures.”

In the reply of contained in the Queensland Government Response to the Treaty Advancement Committee Report (2022), such proposal of the Treaty Advancement Committee is accepted in principle.

The Queensland Government Response reads: “ Once the First Nations Treaty Institute is established, the Path to Treaty Office will work with the Inaugural Institute Council to develop the appropriate legislative approach to establish a relationship between First Nations representative structures and the Institute Council.”

Having agreed on the development of a legislative approach, hence, it could be beneficial to refer more explicitly to a pathway for approval or recommendation by either or both the Minister and Australian First Nation peoples - once their representative mechanisms and structures are in place – for the appointment of the Treaty Institute members.

The current formulation of the Bill, in fact, appears to marginally consider such pathway as “recommendations contained in the inaugural report in relation to the appointment of a member to the Treaty Institute Council”. It seems that the only foreseen appointment mechanism for a Treaty Institute Member is “by the Governor in Council on the recommendation of the Minister”.