




Speech By
Michael Berkman

MEMBER FOR MAIWAR

Record of Proceedings, 9 May 2023

PATH TO TREATY BILL

 **Mr BERKMAN** (Maiwar—Grn) (12.50 pm): I rise to make my contribution on this historic bill. I want to put on the record at the outset that I feel incredibly privileged to have been part of the parliamentary inquiry into the bill. The Path to Treaty Bill lays the groundwork for what is a long overdue process of truth-telling about the darkest parts of our state's history and to further progress towards treaty making. The Greens and I wholeheartedly support the bill and the parallel processes it establishes. I anticipate it will be a far more complex process than most, perhaps any of us, can anticipate at this early stage. We have only just begun on the path to treaty. It will be a long and difficult path, but one that we all—First Nations people and settlers alike—must walk together with honesty, compassion and in good faith.

I will use my contribution to focus on some of the issues that remain of concern to me and to seek clarification from the minister on others, but this should not be taken as anything other than full-throated support for the intent of the bill and the processes it sets in train. To start with I will address some concerns about the time frames for both the committee inquiry and the Truth-telling and Healing Inquiry that have been touched on already. I accept, broadly speaking, the sense of urgency about this reform. It is true that we are literally hundreds of years off the pace for treaty making and we need to get on with it, but I think it was unwise for the government to leave so little time for the committee's inquiry on this bill just so it could be debated during this regional sittings of parliament.

A bill of this significance deserves more time than the two months the committee was allowed for its inquiry. The consequence has been that stakeholders were not given enough time to scrutinise the bill thoroughly and prepare submissions and, perhaps more importantly, the committee simply did not have time to conduct the inquiry in a thorough and culturally respectful way. None of the cape communities, other than Weipa, were consulted. We visited none of the Torres Strait islands other than Thursday Island. Countless other First Nations communities were simply not consulted by the Community Support and Services Committee despite the secretariat's best efforts, and I do want to thank them for their extraordinary effort in putting the inquiry together. If the government hopes for Aboriginal and Torres Strait Islander people to engage in these processes in the spirit of bipartisanship and good faith, the least we could have done at this point was to allow sufficient time for meaningful consultation on the bill before it passed.

So many of Queensland's First Nations people and communities have a well-founded mistrust of government and of the parliament. I say it is well founded because these are the very same institutions that have historically legislated for and overseen the commission of some unspeakable atrocities against Aboriginal and Torres Strait Islander people. So many of these atrocities were authorised by legislation that was notionally passed in this parliament with the best of intentions but with devastating outcomes for those people it purported to protect.

It is worth noting that the government and the parliament's colonial disposition and violence against First Nations people is not a relic confined to Queensland's deep history. It is ongoing. It is evident in the over-representation of First Nations people, and especially children, in our prisons. It is evident in the worst outcomes in health, life expectancy, education, housing and homelessness, to

name a few. It is true that there is much work left to be done once this bill is passed, and there will be much more engagement along the way, but this was the one and only opportunity this parliament had to engage about the processes proposed in the bill.

At this stage, beyond expressing my regret at how short the committee consultation was, I can only hope that the rushed parliamentary processes have not exacerbated existing mistrust or deterred engagement with the processes that will follow. People had a right to be heard on not only the proposals included in the bill but also the things that are deferred for future consideration are left in the minister's hands. The bill does not answer vitally important questions like what will be included in the terms of reference for the Truth-telling and Healing Inquiry. There should have been more opportunity through our consultation for people to inform how the minister might decide the membership of both the inquiry and the institute in a way that ensures these bodies are appropriately qualified, truly independent and representative of the diversity of First Nations communities.

Similar concerns were repeatedly raised by submitters about the proposed length of the Truth-telling and Healing Inquiry. It was clear from submissions to the committee that many considered three years was simply not long enough to conduct this inquiry. The committee's recommendation that the period be extended to five years was intended to ensure the best possible engagement with the inquiry. It was an explicit recommendation of the ITTB in its supplementary submission and one that the ITTB considered was necessary to allow time to build trust with the truth-telling and healing processes. I do feel some disappointment that the bill will not be amended to extend this time frame and I am concerned that it may deter First Nations people from engaging with the inquiry and diminish the process overall.

I think we should not be surprised if or when some First Nations communities are reluctant to engage with the processes established by the bill. Our more recent history has seen newly established colonial legal processes like native title and cultural heritage protection frameworks lead to long and bitter legal disputes within and between families and groups and cause conflict and division. The experience of our colleagues in New Zealand suggests that disputes around treaty making and settlement discussions are inevitable, yet this bill entirely defers the question of what any dispute resolution process will look like.

The explanatory note and the Treaty Advancement Committee recognise that a dispute resolution body will be necessary and it is explicit that supporting structures like this will be established from next year, but it also indicates that this is the same period of time when treaty negotiations will begin. It seems clear that the negotiating framework will need to account for dispute resolution on any number of issues, for example, who can negotiate on behalf of whom or in respect of what land; who is entitled to any land or funds or other outcomes of treaty negotiation and settlement; how do negotiating parties differ from or engage with native title claimants; and how will disputes be resolved as to whether a particular group has a mandate to enter negotiations with the Crown. Whether or not disputes arise over these or other issues, it seems a tribunal or similar dispute resolution body must be established and functioning before treaty negotiations can meaningfully commence. If the minister can, I would ask him to clarify what progress has been made on developing a dispute resolution body, what it will look like and when we can expect to see legislation to establish such a body.

The independence of both the inquiry and the institute is of fundamental importance, but while the institute is established as an independent statutory body, the Truth-telling and Healing Inquiry is not. The bill provides that members of the inquiry will be appointed under the bill, but the inquiry itself will otherwise rely on the department for staff, resources and facilities. I do have some concerns that this potentially risks the independence of the inquiry, especially in circumstances where the department and its predecessors will be the subject of much of the inquiry's work. Funding for the inquiry appears quite separate from the funding allocated for the institute, namely the returns on the \$300 million Path to Treaty Fund. I would ask the minister again if he can confirm that this is the case and, additionally, to provide any other detail about the funding security for the inquiry. I think it is important for us to understand how the government will ensure the independence of an inquiry that is reliant on the department, as I understand it, for essentially all its staffing and resourcing. Questions that remain are things like how many staff will be budgeted for and allocated to support the inquiry, where it will be accommodated, and what other budget will be available for the conduct of the inquiry, including hearings, travel and other expenses.

The bill also appears to fall just short of accepting that First Nations sovereignty over this country has never been ceded. The preamble accepts that Aboriginal and Torres Strait Islander people assert that they have never ceded their sovereignty and continue to assert their sovereignty. One important question I have for the minister is does the government accept the assertion referred to in the preamble: does the government accept that First Nation sovereignty was never ceded and persists today despite the Crown's conflicting claims to sovereignty? The answer to this question seems fundamental to me

as a starting point for negotiation of treaties and to the ultimate shape of any treaties entered. It informs whether the state is only willing to contemplate treaties that effectively cede sovereignty to the Crown, or whether it will pursue treaties designed to facilitate genuine self-determination, self-governance and more fulsome expression of First Nations sovereignty.

The aim of this bill should be to develop agreements between the state and First Nations people that acknowledges the latter's sovereignty, protects their rights and sets the terms for future engagement and negotiations. Treaty making should be independent, transparent, genuinely consultative and properly resourced. It must acknowledge historical and ongoing colonial violence. I am hopeful that in supporting this legislation we will take a step closer to what First Nations people have been asking for for decades, for centuries, and to what generations of justice fighters have marched for, been imprisoned for and died for, and that is a better future for all Queenslanders together.