



# Path to Treaty Bill 2023

**Report No. 30, 57th Parliament**  
**Community Support and Services Committee**  
**April 2023**

## **Acknowledgement of Country**

We respectfully acknowledge the Traditional Custodians of the land on which this report was prepared, and the Traditional Custodians of the lands on which the committee held their public forums throughout Queensland.

We pay our respect to Elders past, present and emerging.

We are very fortunate to live in a country with two of the oldest continuing cultures in those of Aboriginal and Torres Strait Islander peoples, whose lands, winds and waters we all share.

## **Community Support and Services Committee**

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### **Acknowledgements**

The committee acknowledges the assistance provided by the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships, members and staff of the Interim Truth and Treaty Body, Ms Lil Andersen, Chief Executive, Māori Crown Relations – Te Arawhiti, the Queensland Parliamentary Library, Hansard staff, and the communities of Cairns, Weipa, Thursday Island, Palm Island, Townsville, Longreach, Woorabinda, Rockhampton, Inala and Darling Downs.

The committee warmly thanks the Members of the Parliament who assisted the committee during their examination of the Bill: Mr Steve Andrew MP, Member for Mirani; Mr Nick Dametto MP, Member for Hinchinbrook; Mr Aaron Harper MP, Member for Thuringowa; Mr Barry O'Rourke MP, Member for Rockhampton; Ms Joan Pease MP, Member for Lytton; Mr Linus Power MP, Member for Logan; Minister for Resources Hon Scott Stewart MP, Member for Townsville; Mr Les Walker MP, Member for Mundingburra.

Aboriginal and Torres Strait Islander viewers are advised that this report may contain images of deceased persons.

All web address references are current at the time of publishing.



## Contents

<b>Chair's foreword</b>	<b>iii</b>
<b>Recommendations</b>	<b>v</b>
<b>Report Summary</b>	<b>vii</b>
<b>1 Introduction</b>	<b>1</b>
1.1 Policy objectives of the Bill	1
1.2 Background	1
1.2.1 Preamble to Queensland constitution	1
1.2.2 Statement of Commitment	2
1.2.3 Eminent Panel and the Treaty Working Group	2
1.2.4 Government response to the Eminent Panel and the Treaty Working Group	3
1.2.5 Treaty Advancement Committee	3
1.2.6 Queensland Government response to the Treaty Advancement Committee Report	4
1.2.7 Treaty developments in other jurisdictions	4
1.3 Committee engagement process	4
1.3.1 Limited consultation and time for engagement	7
1.4 Legislative compliance	8
1.4.1 <i>Legislative Standards Act 1992</i>	8
1.4.2 <i>Human Rights Act 2019</i>	8
<b>2 Human rights of First Nations people</b>	<b>10</b>
2.1 Self-determination	10
<b>3 Examination of the Bill</b>	<b>14</b>
3.1 Preamble	14
3.2 Path to Treaty process	17
3.2.1 How the Path to Treaty interacts with other initiatives	17
3.2.2 Implementation process	21
3.3 First Nations Treaty Institute and the Truth-telling and Healing Inquiry	26
3.3.1 First Nations Treaty Institute	27
3.3.2 Appointments to the First Nations Treaty Institute Council and the Truth-telling and Healing Inquiry	27
3.3.3 Independence of the First Nations Treaty Institute Council and the Truth-telling and Healing Inquiry	35
3.3.4 Terms of reference	37
3.3.5 Compulsion to produce documents to the Truth-telling and Healing Inquiry	39
3.3.6 Support for stress and psychological trauma	43
3.3.7 New offences	46
3.3.8 Protections	48
3.4 Role for other bodies in the Path to Treaty process	50
3.4.1 Treaty Tribunal	50
3.4.2 Local governments	51

3.4.3	Native Title Prescribed Bodies Corporate and Native Title Representative Bodies	53
3.4.4	Land Councils	54
3.5	Other recommendations	55
3.5.1	Public awareness campaign	55
3.5.2	Obligation on the state to negotiate in good faith	56
3.5.3	Review after 12 months	57
3.5.4	Quorum on the Inquiry	57
3.5.5	Oversight	57
<b>4</b>	<b>Funding</b>	<b>59</b>
	<b>Appendix A – Treaty developments in other jurisdictions</b>	<b>62</b>
<b>1</b>	<b>Australia</b>	<b>62</b>
1.1	Victoria	62
1.2	Northern Territory	63
1.3	Australian Capital Territory	64
1.4	South Australia	65
1.5	Tasmania	65
1.6	New South Wales and Western Australia	65
<b>2</b>	<b>New Zealand - Aotearoa</b>	<b>66</b>
<b>3</b>	<b>Canada</b>	<b>67</b>
	<b>Appendix B – Submitters</b>	<b>68</b>
	<b>Appendix C – Officials at public departmental briefing</b>	<b>70</b>
	<b>Appendix D – Witnesses at public hearings</b>	<b>71</b>
	<b>Appendix E – Abbreviations</b>	<b>72</b>
	<b>Statements of Reservation</b>	<b>73</b>

## Chair's foreword

*"When crimes go unpunished, the world becomes unbalanced".*

These were the words spoken by Wallabi Kuundabah-Saunders on 24 March 2023 in Woorabinda, referring of course to the injustices that First Nations people have suffered for more than 235 years of colonisation and the multi-generational trauma and disadvantage that has tormented Indigenous people throughout this time.

The Path to Treaty is our opportunity to overturn the wrongs perpetrated on First Nations peoples by the horribly misguided iterations of the *Aboriginals Protection and Sale of Opium Act of 1897*. This Act advocated the displacement of Aboriginal peoples to reserves, regulated their employment and perpetrated the most draconian form of social engineering - unleashing a state-sanctioned process of dispossession, brutality and violence.

Injustices continue for First Nations people. Reduced life expectancy, high incarceration rates, poor health, poor education and poor employment outcomes, and low socio-economic status.

I recall moments during my teaching and school administration career where the contrast between non-Indigenous children and First Nations children could not have been more stark. I am not only referring to the difference in educational outcomes, but also the differences in the unacceptable school disciplinary absences and low school attendance. Sadly, these were statistics I was all too familiar with, and I worked diligently every day to overcome the cataclysmic effect on school completion rates and access to further study and employment.

I specifically recall a moment among many that helped to define for me this contrast, when I was principal of a low socio-economic school with a high percentage of Indigenous students. I had organised a bus trip to the University of Queensland for all of my Year 8 students and for the Year 4 students from our feeder primary schools, for the children to experience university life and to build their education aspirations.

Students were lining up to board the bus, when a little Year 4 Indigenous girl said to me: "Miss, I can't go today, I don't have my permission slip signed".

I said "That's ok, I'll give Mum a call".

The little girl responded "But Miss, you don't understand, my Mum said university is not for people like us, so there is no point ringing Mum".

I remember this moment so clearly and recall how deeply troubled I was at the views of this little girl and the beliefs of her family. This was just one of many examples I observed in my teaching career of intergenerational trauma, the impact of racism and prejudice on self-worth and self-efficacy and the harsh impact of colonisation.

I acknowledge the ethical leadership of then Premier, Hon Anna Bligh MP, who in February 2010 ensured the Queensland Parliament passed the amendment to the Queensland Constitution adding an aspirational statement in the preamble marking the 150th anniversary of the establishment of the State of Queensland and providing due recognition to Queensland's Aboriginal and Torres Strait Islander people.

I commend the federal Labor Government for progressing reform on the national stage, with recognition of the Uluru Statement from the Heart and the upcoming referendum for all Australians to consider the inclusion of the Voice to Parliament in the Australian Constitution.

The Path to Treaty Bill also marks a momentous time in Queensland's history, a time to right the wrongs of the past and to pave a better way forward for First Nations. It is a special moment in time too for the wider Queensland community to learn a shared history of Queensland, and indeed share

the benefits generated from treaty-driven knowledge-sharing, resource management and service delivery.

Queenslanders have a right to know the past and to understand how it affects everything we witness and experience today. The Path to Treaty Bill highlights the maturity of the Queensland Government, under Premier Hon Annastacia Palaszczuk MP, to deal honestly with our state's history and provide the foundation for a path forward.

The committee recommends the Bill be passed. The committee is satisfied that sufficient regard has been given to the rights and liberties of individuals in accordance with the *Legislative Standards Act 1992*. The committee is also satisfied that the Bill is compatible with human rights in accordance with the *Human Rights Act 2019*.

I am proud of the participation, concern and passion that every member of the Community Support and Services Committee brought to this inquiry. We have all learnt so much about the experiences and hopes of First Nations people, and whilst we have so much more to learn, our lives are the richer for having had this experience of leading the consultation on this Bill.

Thank you to the communities who welcomed us and to the individuals who spoke to us with courage, honesty and strength when sharing their stories, their hopes and their dreams. On behalf of the committee, I also thank those individuals and organisations who made written submissions on the Bill. Sincere thanks to Chairs, committee members and staff of the Interim Truth and Treaty Body, staff of the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships who assisted the committee during the course of the inquiry, and our Parliamentary Service staff for their ongoing support.

The Path to Treaty presents an opportunity for all Queenslanders to know and to acknowledge our past and set a course for the future that will unify, not separate and divide, so that everyone - and especially our future generations - can progress and prosper together.

I commend this report to the House.



Ms Corrine McMillan MP

Chair

(MBA; M.Ed.; B.Ed.; GAICD; JP(Qual));

2015 Churchill Fellow; 2016 Harvard University Scholarship recipient)



## Recommendations

<b>Recommendation 1</b>	<b>9</b>
The committee recommends the Path to Treaty Bill 2023 be passed.	
<b>Recommendation 2</b>	<b>16</b>
The committee recommends the responsible Minister considers including a reference to the Masig Statement – Malungu Yangu Wakay (Voice from the Deep) in the preamble of the Path to Treaty Bill.	
<b>Recommendation 3</b>	<b>18</b>
The committee recommends that those responsible develop information materials for the community to ensure there is clear understanding of the Path to Treaty process and its relationship with the Uluru Statement from the Heart, and the progress towards a Voice to Parliament.	
<b>Recommendation 4</b>	<b>21</b>
The committee recommends that the Queensland Government continues to support the resolution of Native Title matters that will assist to facilitate the making of Treaties.	
<b>Recommendation 5</b>	<b>21</b>
The committee recommends the Queensland Government articulate a clear and transparent framework when negotiating treaties where there may be established Native Title prescribed body corporates, traditional owners, cross border communities (gathered around state borders), local community interests and displaced First Nations people.	
<b>Recommendation 6</b>	<b>25</b>
The committee notes the strong advocacy by a number of submitters and recommends amending clause 64(2) of the Path to Treaty Bill to state that the Truth-telling and Healing Inquiry must be established for a term of not more than 5 years.	
The committee recommends an amendment to clause 88 of the Path to Treaty Bill to include a requirement that the Inquiry report to the Minister before the expiration of 3 years, to allow for a further 2-year period of operation (as required).	
<b>Recommendation 7</b>	<b>26</b>
The committee recommends those responsible consider the New Zealand Waitangi Treaty framework and principles, among other jurisdictions, as models to inform the Queensland Treaty process.	
<b>Recommendation 8</b>	<b>26</b>
The committee recommends those responsible establish the Queensland Treaty framework from a positive position of equity, opportunity and self-determination, to recognise and value the aspirations, knowledge and skills of First Nations people for the betterment of Queensland and the broader Queensland community.	
<b>Recommendation 9</b>	<b>27</b>
The committee recommends that the responsible Minister reconsider the use of the word 'institute' in the First Nations Treaty Institute and the Treaty Institute Council, and consider renaming the First Nations Treaty Institute and the Treaty Institute Council.	
<b>Recommendation 10</b>	<b>35</b>
The committee recommends clause 55(1)(d) of the Path to Treaty Bill be omitted.	

The committee recommends that a new provision be included in the Path to Treaty Bill providing that a person’s criminal history be taken into account in making appointments to the Treaty Institute Council and senior executive.

**Recommendation 11** **37**

The committee recommends clause 49 of the Path to Treaty Bill be amended to include a provision that the responsible Minister table a copy of the annual report of the Treaty Institute in the Legislative Assembly within 14 sitting days after receiving the annual report.

**Recommendation 12** **38**

The committee recommends the terms of reference for the Truth-telling and Healing Inquiry should explicitly recognise the relationship between truth-telling and treaty.

**Recommendation 13** **38**

The committee acknowledges the important role education plays in creating an accurate historical discourse and in normalising language and culture and recognises that it is the Queensland Government’s responsibility to educate the Queensland community. The committee recommends the Queensland school curriculum reflects the shared history of the State of Queensland.

**Recommendation 14** **39**

The committee acknowledges the importance of the evidence provided throughout the Truth-telling and Healing Inquiry as a key resource in capturing Queensland’s shared history and that it should be published as a legacy for future generations.

The committee recommends that the recording of this evidence during the Inquiry process be managed appropriately, reflecting trauma informed approaches, cultural sensitivities and protection of intellectual property, and with respect for personal requests for anonymity.

**Recommendation 15** **42**

The committee recommends the responsible Minister consider amending clause 87 of the Path to Treaty Bill to include provision for a review 12 months after the commencement of the Inquiry to ensure the powers of the Inquiry continue to support the effective gathering of information that reveals the full impact of colonisation on First Nations people of Queensland.

**Recommendation 16** **55**

The committee recognises the decentralised and expansive geography of Queensland, including traditional owner groups and the mass displacement of peoples during the 235 years of colonisation, and recommends that the Treaty Institute be organised according to representative geographical regions.

**Recommendation 17** **56**

The committee recommends that the Queensland Government conduct a broad and far-reaching public awareness and public information campaign about the importance of treaty, the roles of the Truth-telling and Healing Inquiry and the First Nations Treaty Institute, and how the community can engage with the treaty process.

**Recommendation 18** **58**

The committee recommends the responsible Minister considers amending the Path to Treaty Bill to include a parliamentary oversight provision.

## Report Summary

On 22 February 2023 Premier Anastacia Palaszczuk MP introduced the Path to Treaty Bill to the Queensland Parliament. The Bill was referred to the Community Support and Services Committee for detailed consideration the same day.

### Examination of the Bill

The purpose of the Bill is significant in that it establishes foundational legislation on the Path to Treaty. The Bill's objectives are also clear: to establish a First Nations Treaty Institute to support Aboriginal and Torres Strait Islander peoples to develop a framework and prepare for treaty negotiations with the Queensland Government; and to establish a Truth-telling and Healing Inquiry to inquire into, and report on, the effects of colonisation on Aboriginal and Torres Strait Islander peoples.

### Key findings

The majority of submitters supported the Bill in principle.

During the course of the committee's engagement process on the Bill it became clear that while the Bill's purpose and objectives are straightforward, the importance of the Bill to many in the Queensland community cannot be overstated. The committee heard that for First Nations people, the Bill represents the commencement of the Path to Treaty process, a recognition of First Nations' people, self-determination and human rights, lore and law, culture, history, language and traditional lands and waters. In short, the committee heard that the Bill represents hope for many Queenslanders.

Additionally the concept of a treaty between First Nations people and the Queensland Government evoked personal accounts of injustices, generational trauma, disadvantage and mistrust. For all those who spoke to the committee at a public forum, or provided a written submission, the committee is immensely grateful for their courage and honesty.

### Conclusion

The committee recommends that the Bill be passed. The committee makes 6 recommendations specifically proposing amendment to the Bill.

Recognising the broader implications and importance of the Bill as a marker to the commencement of the Path to Treaty process, the committee also made 12 aspirational recommendations that the committee considers vital to the successful establishment of a treaty framework and acceptance by the wider community; and for treaties made between First Nations people and the Queensland Government for the benefit of future generations.



# 1 Introduction

## 1.1 Policy objectives of the Bill

The objectives of the Path to Treaty Bill 2023 (Bill) are to establish:

- a First Nations Treaty Institute (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
- a Truth-telling and Healing Inquiry (Inquiry) to inquire into, and report on, the effects of colonisation on Aboriginal and Torres Strait Islander peoples.<sup>1</sup>

The Bill would also amend certain provisions in the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* in response to a departmental review to align with the Path to Treaty objectives and repeal provisions that do not support the commitment to a reframed relationship.

*This is our chance to do what we should have done two centuries ago—to make a treaty or treaties with Aboriginal peoples and Torres Strait Islander peoples. There are rare moments in time—perhaps just once in a generation or even once in several generations—where we have an opportunity to be true agents of change. Queensland’s Path to Treaty is such a moment. It is a moment which will define our humanity and our sense of fairness and will be a legacy we leave to our children. Martin Luther King Jr reminded us that the arc of the moral universe is long but it bends towards justice. Dr Jackie Huggins reminds us that the Path to Treaty is about how we mend the very fabric of our society here in Queensland and how we are able to walk together on this land we now share.*

Hon Anastacia Palaszczuk MP, Premier and Minister for the Olympic and Paralympic Games, ‘Path to Treaty Bill: Introduction’, Record of Proceedings, 22 February 2023, p 133.

## 1.2 Background

### 1.2.1 Preamble to Queensland constitution

In February 2010, the Queensland Parliament passed amendment to the Queensland Constitution to provide for a preamble containing an aspirational statement in commemoration of the 150th anniversary of the establishment of Queensland, and to provide due recognition to Queensland’s Aboriginal and Torres Strait Islander peoples.<sup>2</sup> The then Premier Hon Anna Bligh MP, upon introducing the preamble amendment in November 2009, stated:

This preamble will modernise our Constitution, providing a vision for the kind of state that Queenslanders believe in - a society based on democracy, freedom and peace.

A key aspect is the acknowledgement of Aboriginal and Torres Strait Islander peoples as the first Australians and, indeed, the first Queenslanders.<sup>3</sup>

<sup>1</sup> Explanatory notes, p 2.

<sup>2</sup> Constitution (Preamble) Amendment Bill 2009, explanatory notes, p 1.

<sup>3</sup> Queensland Parliament, Record of Proceedings, 24 Nov 2009, p 3476.

### 1.2.2 Statement of Commitment

In July 2019, the Queensland Government signed a joint Statement of Commitment as part of the Tracks to Treaty – Reframing the relationship with Aboriginal and Torres Strait Islander Queenslanders initiative.<sup>4</sup>

The Statement of Commitment, signed by Hon Anastacia Palaszczuk MP, Premier and Minister for Trade, Hon Jackie Trad MP, then Deputy Premier, Treasurer and Minister for Aboriginal and Torres Strait Islander Partnerships and Mick Gooda, Chair of Reparations Taskforce, stated:

Aboriginal and Torres Strait Islander peoples and the Queensland Government are building a reframed relationship that acknowledges, embraces and celebrates the humanity of Indigenous Australians. We are proud that Aboriginal and Torres Strait Islander peoples have continuing rights and responsibilities as the first peoples of Queensland, including traditional ownership and connection to land and waters.<sup>5</sup>

The Statement of Commitment set out the principles for working towards a reframed relationship as:

- recognition of Aboriginal and Torres Strait Islander peoples as the First Peoples of Queensland
- self-determination
- respect for Aboriginal and Torres Strait Islander cultures
- locally led decision-making
- shared commitment, shared responsibility and shared accountability
- empowerment
- free, prior and informed consent
- a strengths-based approach to working with Aboriginal and Torres Strait Islander peoples to support thriving communities.<sup>6</sup>

The first step on the Path to Treaty was the establishment of an Eminent Panel of Aboriginal and Torres Strait Islander Queenslanders and non-Indigenous Queenslanders (Eminent Panel).<sup>7</sup>

### 1.2.3 Eminent Panel and the Treaty Working Group

The Eminent Panel included Dr Jackie Huggins AM and Emeritus Professor Hon Michael Lavarch AO as co-chairs and Mick Gooda, Hon Dame Quentin Bryce AD CVO, Ms Josephine Bourne, Mr Dan Crowley and Mr Kerry O'Brien as members.<sup>8</sup>

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<sup>4</sup> Hon A Palaszczuk MP, Premier and Minister for Trade, and Hon J Trad MP, Deputy Premier, Treasurer and Minister for Aboriginal and Torres Strait Islander Partnerships, 'Historic signing of 'Tracks to Treaty' commitment', media statement, 14 July 2019.

<sup>5</sup> Statement of commitment, July 2019, p 3. Mr Gooda was the Chair of the Queensland Stolen Wages Reparations Taskforce, which was established by the Queensland Government to provide advice and recommendations to the Treasurer and Minister for Aboriginal and Torres Strait Islander Partnerships on the Reparations Scheme — Stolen Wages and Savings. The Reparations Taskforce handed down its report in March 2016: Queensland Stolen Wages Reparations Taskforce, *Queensland Stolen Wages Reparations Taskforce Report: Reconciling Past Injustice*, March 2016.

<sup>6</sup> Statement of commitment, July 2019, p 2.

<sup>7</sup> Statement of commitment, July 2019, p 3.

<sup>8</sup> Treaty Working Group, *Report from the Treaty Working Group on Queensland's Path to Treaty* (Treaty Working Group report), February 2020, pp 8-10.

A Treaty Working Group was also established which included Dr Jackie Huggins AM and Mick Gooda as co-chairs and Mr Kenny Bedford, Ms Cheryl Buchanan, Mr Leon Filewood, Ms Charmaine Foley, Mr Shane Hoffman, Ms Elsie Seriat, Ms Sandi Taylor and Ms Kate Tully as members.<sup>9</sup>

In October to December 2019, consultations were held in 24 communities with more than 1,700 people having their say. There were also 331 online surveys and 38 written submissions.<sup>10</sup>

In February 2020, the Eminent Panel published the Advice and Recommendations from the Eminent Panel on Queensland's Path to Treaty and the Treaty Working Group published the Report from the Treaty Working Group on Queensland's Path to Treaty.

The Eminent Panel and the Treaty Working Group made 8 recommendations relating to:

- Path to Treaty: overview
- the First Nations Treaty Institute
- truth-telling and healing
- capacity building
- community understanding and engagement
- implementation: the Path to Treaty Act
- implementation: resourcing and creation of the First Nations Treaty Future Fund
- transparency.<sup>11</sup>

In May 2020, the Eminent Panel published Supplementary Advice and Recommendations from the Eminent Panel on Queensland's Path to Treaty (in light of COVID-19).

#### **1.2.4 Government response to the Eminent Panel and the Treaty Working Group**

In August 2020, the Queensland Government published the Queensland Government Treaty Statement of Commitment and response to recommendations of the Eminent Panel.

The Queensland Government accepted or accepted in-principle all the recommendations of the Eminent Panel and the Treaty Working Group.<sup>12</sup>

#### **1.2.5 Treaty Advancement Committee**

There was a hiatus in the treaty process due to COVID-19.<sup>13</sup>

In February 2021, members were appointed to the Treaty Advancement Committee (TAC) including Dr Jackie Huggins AM and Mick Gooda as co-chairs, and Emeritus Professor Hon Michael Lavarch AO, Ms Josephine Bourne and Ms Sallyanne Atkinson AO as members.<sup>14</sup>

In October 2021, the TAC published the Treaty Advancement Committee Report (TAC report).

The TAC made 22 recommendations, including:

- the establishment of a truth-telling and healing process, including a Truth-telling and Healing Inquiry, separate from the Treaty Institute

<sup>9</sup> Treaty Working Group report, pp 8-9 and 11-12.

<sup>10</sup> Treaty Working Group report, p 4.

<sup>11</sup> Treaty Working Group report, pp 5-7.

<sup>12</sup> Queensland Government, *Queensland Government Treaty Statement of Commitment and response to recommendations of the Eminent Panel*, August 2020, pp 5-9.

<sup>13</sup> Treaty Advancement Committee, *Treaty Advancement Committee Report* (TAC report), October 2021, p 2.

<sup>14</sup> Explanatory notes, p 2; TAC report, p 4.

- the establishment of the Independent Interim Treaty Body.<sup>15</sup>

### **1.2.6 Queensland Government response to the Treaty Advancement Committee Report**

In August 2022, the Queensland Government published the Queensland Government Response to the TAC Report. The Queensland Government accepted or accepted in-principle the recommendations of the TAC.<sup>16</sup>

The explanatory notes state that the Bill gives effect to the Queensland Government Response to the TAC Report.<sup>17</sup>

### **1.2.7 Treaty developments in other jurisdictions**

Treaty developments in other relevant jurisdictions, particularly Victoria, New Zealand and Canada, are set out in Appendix A.

The committee gained valuable insights into the operation of the New Zealand treaty system in Brisbane, and then during a study tour of that jurisdiction from 3 to 5 April 2023, where the committee met with:

- Ms Lil Andersen, Chief Executive, Māori Crown Relations - Te Arawhiti
- Mr Glenn Webber, Acting Chief Executive, Māori Crown Relations - Te Arawhiti
- Judge Sarah Reeves, Māori Land Court, and Deputy Chairperson, Waitangi Tribunal
- the Māori Affairs Select Committee at the New Zealand Parliament
- Hon Andrew Little MP, Minister for Treaty of Waitangi Negotiations.

## **1.3 Committee engagement process**

Following the introduction of the Bill on 22 February 2023, the Bill was referred to the committee for detailed consideration with a reporting date of 21 April 2023.

The committee conducted a public briefing with officers from the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (department), and 2 public hearings in Brisbane.

Additionally, the committee welcomed everyone to attend and contribute at the 10 public forums that were held at the following locations:

- Cairns
- Weipa
- Thursday Island
- Palm Island
- Townsville
- Longreach
- Woorabinda
- Rockhampton
- Inala
- Darling Downs, Chinchilla and Cunnamulla communities (via video conference).

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<sup>15</sup> TAC report, p 3.

<sup>16</sup> TAC report, pp 2-9.

<sup>17</sup> Explanatory notes, p 3.





*Photo 1 - Cairns public forum, 20 March 2023*



*Photo 2 - Weipa public forum, 20 March 2023*



*Photo 3 - Thursday Island public forum, 21 March 2023*



*Photo 4 - Palm Island public forum, 22 March 2023*



*Photo 5 - Townsville public forum, 22 March 2023*



*Photo 6 - Longreach public forum, 23 March 2023*





*Photo 7 - Woorabinda public forum, 24 March 2023*



*Photo 8 - Rockhampton public forum, 24 March 2023*

Following the committee's call for submissions, the committee received and accepted 39 written submissions. In consideration of feedback from stakeholders, the committee extended the date for the lodging of submissions to 12 April 2023.

### **1.3.1 Limited consultation and time for engagement**

Some participants during the committee's inquiry process raised concerns about the time frames provided for the inquiry into the Bill and the time allotted for consultation, the lodgement period for submissions,<sup>18</sup> the extent of consultation on the Bill, seeking wider consultation in regional areas,<sup>19</sup> with 'people in place',<sup>20</sup> and with traditional owners rather than representative organisations.<sup>21</sup> Others

<sup>18</sup> Submissions 4, 7, 8, 10 and 31; FAIRA, public hearing transcript, Brisbane, 27 March 2023, p 15; Queensland Human Rights Commission (QHRC), public hearing transcript, Brisbane, 27 March 2023, p 6; Kitty Gebadi, Deputy Mayor, Northern Peninsula Area Regional Council, public forum transcript, Thursday Island, 21 March 2023, p 19; Fred Gela, public forum transcript, Thursday Island, 21 March 2023, p 20.

<sup>19</sup> Ned David, public forum transcript, Thursday Island, 21 March 2023, p 12; Kitty Gebadi, Deputy Mayor, Northern Peninsula Area Regional Council, public forum transcript, Thursday Island, 21 March 2023, p 19; Beryl Meiklejohn, public hearing transcript, Inala, 17 April 2023, p 5.

<sup>20</sup> Harry Seriat, public forum transcript, Thursday Island, 21 March 2023, p 8. See also Robert Sagigi, public forum transcript, Thursday Island, 21 March 2023, pp 1-2.

<sup>21</sup> Robert Sagigi, public forum transcript, Thursday Island, 21 March 2023, pp 1-2.

queried the consultation process of the Path to Treaty process more broadly,<sup>22</sup> including engagement with non-Indigenous Queenslanders.<sup>23</sup>

### **Committee comment**

The committee understands submitters' concerns in relation to the limited time for consultation on the Bill. Whilst it was not possible for the committee to consult with every community in Queensland, every effort was made to engage with all communities requesting engagement: in person, via telephone or videoconference.

The committee also notes that this Bill is one phase of the Path to Treaty process and that consultation has been and will continue to be done in the context of the other phases throughout the Path to Treaty.

## **1.4 Legislative compliance**

The committee's deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* (LSA) and the *Human Rights Act 2019* (HRA).

### **1.4.1 Legislative Standards Act 1992**

The committee's assessment of the Bill's compliance with the LSA identified potential issues, in particular in relation to:

- the rights and liberties of associated with disqualification removal and suspension of Treaty Institute Council members and removal of senior executive officers (see sections 3.3.2.5 and 3.3.2.6)
- the rights and liberties of individuals associated with proposed new offences (see sections 3.3.5.1 and 3.3.7.1)
- the rights and liberties of individuals associated with compulsion to produce documents to the Truth-telling and Healing Inquiry (see section 3.3.5.1)
- proposed protection of members and persons appearing before the Truth-telling and Healing Inquiry – (see sections 3.3.8.2 and 3.3.8.4).

These issues are discussed at the relevant sections below.

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain. Explanatory notes were tabled with the introduction of the Bill. The explanatory notes contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

### **1.4.2 Human Rights Act 2019**

The committee considered the Bill's compatibility with the HRA and notable features are discussed in relevant sections below.

A statement of compatibility was tabled with the introduction of the Bill as required by s 38 of the HRA. The committee sought clarification from the department in relation to requirements for natural justice, relevant to the Treaty Institute Council in cl 52. The department provided a written response

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<sup>22</sup> Gur A Baradharaw Kod (GBK) Torres Strait Sea and Land Council, submission 19, p 2; Sharon Smith, submission 10, p 1.

<sup>23</sup> ANTAR (National), Australian Lawyers Alliance, ANTAR QLD, submission 31, p 5; Sharon Smith, submission 10, p 1.

and further information on the principles of natural justice as it applies to decision-making processes.<sup>24</sup>

**Committee comment**

The committee is satisfied that the statement of compatibility, along with further information provided by the department, contains sufficient information to facilitate understanding of the Bill in relation to its compatibility with human rights.

The committee finds the Bill to be compatible with human rights.

The committee is required to determine whether or not to recommend that the Bill be passed.

**Recommendation 1**

The committee recommends the Path to Treaty Bill 2023 be passed.

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<sup>24</sup> Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (DSDSATSIP), correspondence, 22 March 2023, p 10.

## 2 Human rights of First Nations people

Clause 6 of the Bill states that the rights of Aboriginal and Torres Strait Islander peoples are acknowledged and respected in accordance with the HRA and principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).<sup>25</sup>

The statement of compatibility states that the Bill ‘embeds respect for human rights’.<sup>26</sup>

Submitters were generally supportive of these principles being included in the Bill.<sup>27</sup>

The Queensland Human Rights Commission (QHRC) submission provided further context in relation to the human rights of First Nations people:

Truth and treaty are necessary steps to achieve equal recognition and formal equality before the law for Aboriginal peoples and Torres Strait Islander peoples as required by section 15 of the *Human Rights Act 2019*. They are also significant for the cultural rights of Aboriginal peoples and Torres Strait Islander peoples which are given specific acknowledgement and protection by the preamble and section 28 of the *Human Rights Act 2019*.

The human rights, including the cultural rights, of Aboriginal peoples and Torres Strait Islander peoples must also inform the processes towards achieving truth and treaty. The cultural rights in the *Human Rights Act 2019* are drawn from the International Covenant on Civil and Political Rights, article 27, and the United Nations Declaration on the Rights of Indigenous Peoples, articles 8, 25, 29 and 31. The Commission commends the government for reflecting these provisions in the principles in Clause 6 of the Bill[.]

...

Embedding these human rights principles is critical to achieve a process of treaty making and truth telling that respects and promotes human rights.<sup>28</sup>

One submitter stated that these rights are legal rights rather than ‘merely principles’ to guide the conduct of the State.<sup>29</sup>

### **Committee comment**

The committee emphasises the significance of the *Human Rights Act 2019* and the United Nations Declaration on the Rights of Indigenous Peoples as guiding principles in the Bill and as part of the Path to Treaty process.

#### **2.1 Self-determination**

Clause 6 of the Bill refers to the importance of self-determination for Aboriginal and Torres Strait Islander peoples as a principle which applies in the administration of the Act.<sup>30</sup>

The position of the Queensland Government, as set out in the statement of compatibility, is that the Bill ‘recognises the importance of self-determination for Aboriginal peoples and Torres Strait Islander peoples’.<sup>31</sup>

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<sup>25</sup> Bill, cl 6(1).

<sup>26</sup> Statement of compatibility, p 1.

<sup>27</sup> Submissions 6, 7, 15, 18, 31, 32, 34.

<sup>28</sup> Submission 6.

<sup>29</sup> Castan Centre for Human Rights Law, submission 4.

<sup>30</sup> Bill, cl 6(2)(a).

<sup>31</sup> Statement of compatibility, p 2.

Self-determination is also recognised in the preamble to the HRA.<sup>32</sup> However, the right to self-determination is not specifically protected in the HRA.<sup>33</sup>

The statement of compatibility further states that cultural rights of Indigenous peoples, as set out in s 28 of the HRA, have 'close ties' to the right to self-determination and may be seen as 'self-determination enhancing'.<sup>34</sup>

The right to self-determination is set out in Article 1(1) of the *International Covenant on Civil and Political Rights*:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.<sup>35</sup>

The right to self-determination is also set out in Article 3 of the UNDRIP:

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.<sup>36</sup>

Article 4 of the UNDRIP provides:

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.<sup>37</sup>

*I really want to reiterate the importance of self-determination and ensuring that the treaty process and the representative structures of First Peoples are led by First Peoples. Even in the short time since we began this journey here in Victoria, we have seen the benefits of what this independence and self-determination has meant for our communities. We have been able to establish a strong, independent, self-determined representative body. We have been able to negotiate with government and agree on the landmark model and the basis for treaty negotiations to take place on a more level playing field—and guess what: the sky has not fallen in. It is quite the contrary. First Peoples in Victoria are taking steps towards empowerment and being able to self-determine our own futures and we are bringing all Victorians along on the journey with us.*

Auntie Geraldine Atkinson, co-chair, First Peoples Assembly of Victoria, public hearing transcript, Brisbane, 27 March 2023, p 3.

Some submitters strongly supported the inclusion of the principle of self-determination.<sup>38</sup> One submitter stated that government recognition of and support for self-determination is essential in addressing 'many of the complex issues we face including the ongoing impact of intergenerational trauma.'<sup>39</sup> Self-determination is seen as key to 'empowering our communities with the resources, voice and processes to ensure their children's future on their own terms.'<sup>40</sup>

<sup>32</sup> *Human Rights Act 2019*, preamble [6].

<sup>33</sup> Statement of compatibility, p 2.

<sup>34</sup> Statement of compatibility, p 2.

<sup>35</sup> International Covenant on Civil and Political Rights, Part 1, Article 1, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

<sup>36</sup> United Nations Declaration on the Rights of Indigenous Peoples, Article 3, <https://www.ohchr.org/en/indigenous-peoples/un-declaration-rights-indigenous-peoples>.

<sup>37</sup> United Nations Declaration on the Rights of Indigenous Peoples, Article 4, <https://www.ohchr.org/en/indigenous-peoples/un-declaration-rights-indigenous-peoples>.

<sup>38</sup> Submissions 18 and 20.

<sup>39</sup> Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP), submission 20, p 1.

<sup>40</sup> QATSICPP, submission 20, p 4.

A participant in a public forum in Cairns stated in relation to self-determination:

... if we are not at the table, how can we have an input into the impacts? Whatever things are coming up, we need to be at the table.<sup>41</sup>

This was echoed by a number of other participants.<sup>42</sup> One submitter, the Castan Centre for Human Rights Law, stated:

Without adherence to the rights recognised in the UNDRIP, any pathway to treaty and truth risks imposing top-down benevolent reforms on First Nations people and failing to properly engage First Nations people to secure their free, prior, and informed consent and achieve their self-determination.<sup>43</sup>

Other submitters expressed concerns that while the principles outlined in the Bill are ‘noble’, the Bill ‘does not live up to these high-minded aspirations’:

... the Bill refers to the importance of self-determination to First Nations peoples but does not itself recognise or acknowledge the right of First Nations peoples to self-determination. It states that the rights of First Nations peoples are respected in accordance with the United Nations Declaration on the Rights of Indigenous Peoples but makes no commitment to work with First Nations peoples to bring all Queensland laws into conformity with that Declaration.<sup>44</sup>

*We do not believe that the bill reflects the right of self-determination, including on matters of the degree of involvement and independence of Aboriginal and Torres Strait Islander peoples in this process, particularly during this architecture framework process that we are looking at. We believe that the compliance with human rights report that was given did not give a true description of self-determination but rather borrowed upon other rights—cultural rights—to say that this is close to or reflecting self-determination.*

*Self-determination is the right to autonomy and decision-making. It is also the right to self-government, if people identify that desire. It also points out very early in the definition of self-determination ‘to determine their political status’. As we have seen in contemporary times, Aboriginal people are talking about the sovereign identity, the sovereign existence and the ability to negotiate from some political autonomy from jurisdiction of governments of the states, of the federal and so on. I am not saying that that is an expression in any way of secession—it is not—but rather that the sovereign status of our people has to be reflected in this process, coming to the table to talk about treaty. This should happen from day one. We believe that the Path to Treaty Bill is in fact day one to set up the infrastructure. We know that there are things to be determined further on down, but self-determination has to be visible and has to be seen as such by our people from day one.*

Les Malezer, Chairperson, Foundation for Aboriginal and Islander Research Action, public hearing transcript, Brisbane, 27 March 2023, p 15.

The Queensland Human Rights Commissioner stated:

It is important to recognise that the right to self-determination is not currently protected by the Human Rights Act. Whilst it is acknowledged in the preamble of the Human Rights Act, it is not actually a protected right, and this bill does not change that. I would like to think that at the end of this process—

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<sup>41</sup> Ray Sambo, public forum transcript, Cairns, 20 March 2023, p 8.

<sup>42</sup> See Stacey Ketchell, public forum transcript, Cairns, 20 March 2023, p 13; Sandi Taylor, public forum transcript, Cairns, 20 March 2023, p 18; Florence Onus, public forum transcript, Townsville, 22 March 2023, p 5; Tarryn Cora, public forum transcript, Rockhampton, 24 March 2023, p 10.

<sup>43</sup> Submission 4, p 3.

<sup>44</sup> Foundation for Aboriginal and Islander Research Action (FAIRA), submission 7, p 1.



that is, the treaty process—there would be no question about the right to self-determination being protected in Queensland.<sup>45</sup>

**Committee comment**

The committee recognises the importance of self-determination to Aboriginal and Torres Strait Islander peoples, that is, that they freely determine their political status and freely pursue their economic, social and cultural development.

The committee notes the position of the Queensland Government that self-determination is not currently a right under Queensland law but a principle which will underpin the Path to Treaty process.

The committee also notes the views expressed by the Queensland Human Rights Commissioner that the Path to Treaty process will strengthen the recognition of the right to self-determination in Queensland.

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<sup>45</sup> Public hearing transcript, Brisbane, 27 March 2023, p 7.

### 3 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.<sup>46</sup>

The majority of submitters supported the Bill in principle.<sup>47</sup>

#### 3.1 Preamble

The Bill includes a preamble, which is consistent with recommendations of the TAC Report.<sup>48</sup>

The explanatory notes state:

The preamble sets out the Parliament of Queensland's recognition of the importance, significance and endurance of Aboriginal and Torres Strait Islander peoples, their traditions, history, laws, languages, culture and traditional knowledge. Importantly, the preamble recognises that the colonisation of Queensland occurred without the consent of Aboriginal and Torres Strait Islander peoples. Further, the preamble states that Aboriginal and Torres Strait Islander peoples assert they have never ceded their sovereignty over their lands, seas, waters, air and resources, and continue to assert their sovereignty.<sup>49</sup>

The administering department explained the significance of the preamble as follows:

We all know that a preamble does not really have a particular legal effect, but it does give that sense and feeling of what the bill is about and where it is potentially going to go as we advance the Path to Treaty.<sup>50</sup>

The administering department also stated:

This would be the first opportunity for there to be the relevant acknowledgements of the true experiences of First Nations people of this state so it was critical that a foundation bill, a historic bill like this, sets that in place. Hence it is a fairly lengthy preamble, but it supports the overall truth-telling journey. It starts to tell the true history of this state by the acknowledgements that are within it. I think in many respects it is starting that truth-telling process that the inquiry will be taking forward.<sup>51</sup>

*Aboriginal and Torres Strait Islander peoples are still here; our sovereignty was never ceded. Recognising this truth and making the more than 200 years of wrongs right is what this treaty process is all about. We believe the Path to Treaty Bill represents one of Queensland's greatest opportunities to reconcile our challenging past with a hopeful future—that is what we are doing; we are selling hope—that ensures First Nations people's right to self-determination and to have a real and meaningful say in the decisions that affect our people, our communities, our culture and our country.*

Cheryl Buchanan, Co-Chair, Interim Truth and Treaty Body (ITTb), public hearing transcript, Brisbane, 13 March 2023, p 2.

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<sup>46</sup> The Bill proposes to amend the Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984 and the Fire and Emergency Services Act 1990, cls 98-110 and cls 111-112. There was no stakeholder feedback on these proposed amendments.

<sup>47</sup> Submissions 2, 5, 6, 8, 9, 11, 12, 14, 15, 16, 17, 18, 21, 22, 23, 24, 27, 28, 31, 32, 33, 34, 35 and 39.

<sup>48</sup> TAC report, recommendations 2.1-2.6, p 4.

<sup>49</sup> Explanatory notes, p 14.

<sup>50</sup> DSDSATSIP, public briefing transcript, Brisbane, 13 March 2023, p 9.

<sup>51</sup> DSDSATSIP, public briefing transcript, Brisbane, 13 March 2023, p 8.

A number of submitters and participants in public forums had concerns about the drafting of the preamble, in particular in relation to:<sup>52</sup>

- paragraph 2 to recognise ‘Aboriginal and Torres Strait Islander peoples were the traditional owners of their lands, seas, waters, air and resources since time immemorial’<sup>53</sup>
- paragraph 4 to remove the notion that First Nations people ‘assert’ they have never ceded their sovereignty<sup>54</sup>
- paragraph 5 to include that Aboriginal and Torres Strait Islander peoples have a continuing responsibility ‘to manage and protect’ their lands, seas, waters, air and resources<sup>55</sup>
- paragraph 6 to include a reference to ‘the forced and illegal removal of Aboriginal and Torres Strait Islander men, women and children’<sup>56</sup>
- paragraph 10 to include a reference to ‘redress’.<sup>57</sup>

Some submitters and participants at public forums wanted additions to the preamble, including:

- an acknowledgement that the Path to Treaty is to be conducted using a rights based approach<sup>58</sup>
- an acknowledgement of the stolen generations in Queensland<sup>59</sup>
- an acknowledgement of the contribution of Indigenous servicemen in the Second World War and the lack of support for them on their return<sup>60</sup>
- a reference to the Masig Statement – Malungu Yangu Wakay (Voice from the Deep):
  - signed as part of the 85th Anniversary celebrations of the First Island Councillors Conference that took place on Masig Island on 23rd August 1937
  - includes aims to achieve self-determination for the people of the Torres Strait and Northern Peninsula area; to freely determine political status and pursue economic, social and cultural development; self-government in matters relating to internal and local affairs, and to create partnerships with regional stakeholders, and the Queensland and federal governments to achieve the region's goals and aspirations.<sup>61</sup>

*[W]e want more control of our affairs. I do believe that a treaty, if it is done appropriately, will achieve a great deal of that.*

Ned David, public forum transcript, Thursday Island, 21 March 2023, p 12.

<sup>52</sup> Ned David, public forum transcript, Thursday Island, 21 March 2023, p 4; David Saylor, public forum transcript, Townsville, 22 March 2023, p 14; Saylor Legal, submission 36, Preamble to the Path to Treaty Bill 2023.

<sup>53</sup> David Saylor, public forum transcript, Townsville, 22 March 2023, p 14; Saylor Legal, submission 36, Preamble to the Path to Treaty Bill 2023.

<sup>54</sup> Ned David, public forum transcript, Thursday Island, 21 March 2023, p 4; GBK Torres Strait Sea and Land Council, submission 19, p 4.

<sup>55</sup> David Saylor, submission 36, p 5.

<sup>56</sup> David Saylor, public forum transcript, Townsville, 22 March 2023, p 14; Saylor Legal, submission 36.

<sup>57</sup> David Saylor, public forum transcript, Townsville, 22 March 2023, p 14; Saylor Legal, submission 36.

<sup>58</sup> Queensland Nurses & Midwives' Union (QNMU), submission 16, pp 6-7.

<sup>59</sup> Florence Onus, public forum transcript, Townsville, 22 March 2023, p 23.

<sup>60</sup> Donah Illin, public forum transcript, Townsville, 22 March 2023, p 18.

<sup>61</sup> Torres Shire Council, submission 35, p 1.

In relation to the suggested change in wording in paragraph 6 of the preamble, the administering department, in its response to submissions, stated that these matters had been ‘considered in detail with the ITTB and the outcome is the wording in the Preamble paragraph 6’.<sup>62</sup>

The Interim Truth and Treaty Body stated:

... the preamble is the bedrock for understanding the Bill. It is legislative recognition of colonisation, and the ongoing impacts of disempowerment, dispossession and trauma; the necessary predicates to “redressing the past failures and injustices to bring hope, a better future, and a more just relationship between First Nations Peoples and the Queensland Government.”

...

The preamble itself speaks truth. The first part (paragraphs one through six) set the historical facts: more than sixty millennia over which Aboriginal and Torres Strait Islander Peoples governed their land, and the dispossession and disempowerment of the same peoples by the harmful acts of colonisation. It goes on to recognise that all Queenslanders have a right to know the past, and to understand how it affects everything we witness and experience today.

The second part of the preamble (paragraphs 7 through 10) harness the voice of Queenslanders, heard through the last four years of formal engagement on the Path to Treaty; dating from the Reparations Taskforce, followed by the Treaty Working Group, the Eminent Panel and then the Treaty Advancement Committee (TAC).

This is the first time these matters have been recognised in legislation. The preamble is landmark not least because it marks ‘the maturity of Queensland to deal honestly with its history and provide the foundation for a path forward’.

...

Great care has been taken with the wording of the preamble, to honour the truth of our history, and ensure integrity is given to all we have heard from Queenslanders during the earlier consultation phases of the path to treaty.<sup>63</sup>

### **Committee comment**

The committee acknowledges the concerns of submitters and participants at public forums in relation to the wording of the preamble.

The committee considers that the drafting of the preamble was a result of great care and reflects both historical facts and formal engagement on the Path to Treaty. As such, it marks the beginning of the truth-telling process.

The committee is of the view that the preamble would be improved by including a reference to the Masig Statement – Malungu Yangu Wakay (Voice from the Deep).

### **Recommendation 2**

The committee recommends the responsible Minister considers including a reference to the Masig Statement – Malungu Yangu Wakay (Voice from the Deep) in the preamble of the Path to Treaty Bill.

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<sup>62</sup> DSDSATSIP, correspondence, 24 March 2023, p 10.

<sup>63</sup> Submission 21, p 9-10.

## 3.2 Path to Treaty process

### 3.2.1 How the Path to Treaty interacts with other initiatives

A number of submitters expressed concerns about how the Path to Treaty interacts with other initiatives.<sup>64</sup>

#### 3.2.1.1 *Uluru Statement from the Heart*

The explanatory notes state that the Bill and the Queensland Path to Treaty process are consistent with the Uluru Statement from the Heart and its themes of Voice, Treaty and Truth.<sup>65</sup>

Submitters and participants in public forums expressed support for the Uluru Statement from the Heart.<sup>66</sup>

The Queensland Mental Health Commission (QMHC) submitted that the truth-telling process ‘enacts a critical element under the *Uluru Statement from the Heart*’.<sup>67</sup>

A number of submitters suggested there was confusion about the Voice to Parliament and the Queensland Path to Treaty process. Some suggested that the Queensland Government should develop materials on each of the themes of the Uluru Statement from the Heart so ‘the public can understand the proposals and make informed decisions’ and how the work of the Institute and Inquiry align with developments at the federal level.<sup>68</sup>

#### 3.2.1.2 *Voice to Parliament: Federal and state*

One participant at a public forum noted the Bill reflects the themes of Treaty and Truth but there is no reference to the Voice to Parliament.<sup>69</sup>

One submission commented that there is confusion about, ‘how this State Treaty interacts with the Federal Voice. The lack of clear communication around these elements (and lack of consultation) is resulting in many to not know about the Treaty unless explicitly involved in the process.’<sup>70</sup>

The Interim Truth and Treaty Body (ITTb) stated in its submission:

With the Commonwealth government now committed to the Uluru themes and proposing a Constitutional referendum to establish a Voice to Parliament, it is quite conceivable that the regional structures to potentially work with the National Voice would inform how the Institute Council is configured.<sup>71</sup>

The ITTB further stated the Queensland Government has established a First Nations Consultative Committee to develop a voice model for Queensland. The Committee membership is drawn from eight (8) regions – Cape York Peninsula, Far North Queensland, Gulf and West Queensland, North

<sup>64</sup> Submissions 7, 9, 14, 15, 22, 23 and 31; Beryl Meiklejohn, public hearing transcript, Inala, 17 April 2023, p 2.

<sup>65</sup> Explanatory notes, p 13.

<sup>66</sup> Submissions 9, 14, 15, 19 and 33; Binda Warren, public forum transcript, Cairns, 20 March 2023, p 3; Arika Appleby, public forum transcript, Townsville, 22 March 2023, p 24.

<sup>67</sup> Queensland Mental Health Commission (QMHC), submission 14.

<sup>68</sup> Submissions 9, 22 and 33. See also Barbara Hatfield, public forum transcript, Rockhampton, 24 March 2023, p 20.

<sup>69</sup> Ray Sambo, public forum transcript, Cairns, 20 March 2023, p 8.

<sup>70</sup> Local Government Association of Queensland (LGAQ), submission 9, p 2. See also George Blair, public forum transcript, Woorabinda, 24 March 2023, p 13.

<sup>71</sup> Submission 21, p 15.

Queensland, Central Queensland, South West Queensland, South East Queensland, and the Torres Strait.<sup>72</sup>

### **Committee comment**

The committee notes the confusion in the community in relation to the Uluru Statement from the Heart, the Voice to Parliament at both federal and state levels and the Path to Treaty process but it appreciates that the rights of First Nations people are being articulated on a national and state level.

### **Recommendation 3**

The committee recommends that those responsible develop information materials for the community to ensure there is clear understanding of the Path to Treaty process and its relationship with the Uluru Statement from the Heart, and the progress towards a Voice to Parliament.

#### **3.2.1.3 Closing the Gap**

The National Agreement on Closing the Gap (Closing the Gap) is to 'enable Aboriginal and Torres Strait Islander people and governments to work together to overcome the inequality experienced by Aboriginal and Torres Strait Islander people, and achieve life outcomes equal to all Australians.'<sup>73</sup>

One submitter expressed concern that there was no reference to Closing the Gap in the Bill.<sup>74</sup> Several submitters suggested the treaty negotiations were an opportunity to align with Closing the Gap and provide a means of upholding commitments made under Closing the Gap.<sup>75</sup>

Submitters also stressed that consultation with First Nations communities, community-controlled organisations, Elders and other First Nations stakeholder groups would represent steps towards shared decision-making, and that partnerships between government and First Nations communities and reframing the relationship with First Nations communities are significant in both Closing the Gap and the Path to Treaty process.<sup>76</sup>

The overlap between Closing the Gap and the Path to Treaty process is evident as a participant in a public forum stated: 'Closing the gap is a big issue and it is not only for health; it is for everything: racism, alcoholism, no work and education for our kids.'<sup>77</sup>

### **Committee comment**

The committee supports the aim of the National Agreement on Closing the Gap to overcome the inequality experienced by First Nations people.

The committee is of the view that the Path to Treaty process can also have a significant impact in closing the gap.

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<sup>72</sup> Submission 21, p 15.

<sup>73</sup> *Closing the Gap*, 'National Agreement on Closing the Gap', accessed on 30 March 2023, <https://www.closingthegap.gov.au/national-agreement>.

<sup>74</sup> Queensland Indigenous Family Violence Legal Service (QIFVLS), submission 23, p 1.

<sup>75</sup> Submissions 20 and 23.

<sup>76</sup> Submissions 23 and 31.

<sup>77</sup> Rexie Burke, public forum transcript, Weipa, 20 March 2023, p 10.

### 3.2.1.4 Strengthening Community Safety Bill and the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system

A number of submitters and participants at public forums expressed concern in relation to the exclusion of the operation of the HRA in the recent *Strengthening Community Safety Act 2023*.<sup>78</sup> Submitters suggested that this:

- is inconsistent as the state seeks to adhere to the HRA in some areas and disregard it in other areas<sup>79</sup>
  - is ‘in conflict, both in principle and in practice, with this Bill and with the administration of the proposed legislation in accordance with the guiding principles’<sup>80</sup>
- challenges the extent to which the Path to Treaty process is one of partnership and good faith<sup>81</sup>
- undermines good faith treaty negotiations by pursuing policies that are ‘detrimental to or that disproportionately affect Aboriginal and Torres Strait Islander peoples, including youth.’<sup>82</sup>

Submitters also considered that a treaty or treaties could be important in how the government determines amendments to youth justice, which disproportionately impact First Nations young people, and tackling the over-representation of First Nations young people in detention.<sup>83</sup>

*Our stories are that we must share our country. People might be in hardship and all that sort of thing, and that shared country is a part of what we do as in welcoming people. That, I think, is part of why we had no wars on this continent for 65,000 years. We need to settle with the newcomers to our land. We need to settle it the only way we can possibly settle it out. It is not by somebody forcing laws upon us, taking the children away, children ending up in the corrective services and that sort of thing. The only way we can go is treaty. That is the only true way. It has to be a fair and honest treaty, and it is not one above the other. It is as equals that we talk.*

Danny Shane, public forum transcript, Cairns, 20 March 2023, p 10.

The department, in its response to submissions, stated that the Bill focuses on ‘the development of treaty making rather than matters associated with the criminal justice system’.<sup>84</sup>

#### **Committee comment**

The committee acknowledges the concerns of submitters and participants in the public forums in relation to the over-representation of First Nations people, particularly First Nations young peoples, in the criminal justice system. It is a concern shared by the committee.

The committee is of the view that the Path to Treaty process can also have a significant impact in addressing this issue.

<sup>78</sup> Submissions 4 and 18; Sandi Taylor, public forum transcript, Cairns, 20 March 2023, p 18; James Giugni, public forum transcript, Cairns, 20 March 2023, p 25.

<sup>79</sup> Castan Centre for Human Rights Law, submission 4, p 5.

<sup>80</sup> ADA Australia, submission 18, p 3.

<sup>81</sup> Castan Centre for Human Rights Law, submission 4, 5.

<sup>82</sup> ANTAR (National), Australian Lawyers Alliance, ANTAR QLD, submission 31. See also YFS Ltd, submission 15.

<sup>83</sup> Submissions 20 and 34.

<sup>84</sup> DSDSATSIP, correspondence, 24 March 2023, p 7.

### 3.2.1.5 *Native Title*

Submitters and participants at public forums raised numerous and varied concerns relating to Native Title and the Path to Treaty process.

Participants in public forums raised various issues in relation to Native Title:

- ‘We have got our Native Title and we are still not able to get country back.’<sup>85</sup>
- ‘“[W]e have Native Title, but what is Native Title really doing for us?” We are placed on conditions in regards to what we can and cannot do. If the state government is going to be genuine in regards to treaty, then look at colonisation. Our land was taken from us. The history speaks for itself. ...The treaty is the future; it is moving us forward.’<sup>86</sup>
- Native Title has ‘restricted our communities as to what they can do on their own country’.<sup>87</sup>
- ‘Native Title has done nothing but create a lot of division for our people.’<sup>88</sup>
- ‘This Native Title has always been on us to prove that we belong to that country, so how about the government changing it and the onus being on them to prove that we are not from that country?’<sup>89</sup>

Some expressed concern about potential confusion between Native Title determinations as a commonwealth government process and the Path to Treaty as a state government process.<sup>90</sup>

Another submitter stated that the state objecting ‘to Native Title claims will inevitably detract from the intentions of the Path to Treaty and reconciliatory pathways’.<sup>91</sup>

Participants in public forums expressed concerns about the impact of Native Title processes and that these impacts need to be addressed in the Path to Treaty process.<sup>92</sup>

*Native Title processes need to be addressed because that has caused a lot of friction in and amongst families over land matters. ... If we do not get the process right in and amongst the traditional owners and particularly over land matters through Native Title then I cannot see how a lot of traditional owners will effectively participate in this treaty process, in its development and also in its outcomes.*

*What needs to happen is Native Title needs to be addressed, because that is the No. 1 concern and it is the biggest land asset that any individual would have hold of for economic benefits, as you would all know. Native Title stymies our economic growth through that process and, as I said, it has taken away my identity.*

Roderick Bourke, public forum transcript, Cairns, 20 March 2023, p 2.

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<sup>85</sup> Carol Yamashita, public forum transcript, Weipa, 20 March 2023, p 12.

<sup>86</sup> Angelina Arkee, public forum transcript, Townsville, 22 March 2023, p 2.

<sup>87</sup> Virginia Wyles, public forum transcript, Townsville, 22 March 2023, p 7.

<sup>88</sup> Linda Saltner, public forum transcript, Townsville, 22 March 2023, p 10.

<sup>89</sup> Nyoka Hatfield, public forum transcript, Rockhampton, 24 March 2023, p 17.

<sup>90</sup> Queensland University of Technology, submission 22; Roderick Burke, public forum transcript, Cairns, 20 March 2023, p 11.

<sup>91</sup> Community Legal Centres Queensland, submission 34, p 3.

<sup>92</sup> Roderick Burke, public forum transcript, Cairns, 20 March 2023, p 2; Danny O’Shane, public forum transcript, Cairns, 20 March 2023, p 10; Deborah Tull, public forum transcript, Rockhampton, 24 March 2023, p 7; Matilda Bani, public hearing transcript, Inala, 17 April 2023, p 10; Kerry Charlton, public hearing transcript, Inala, 17 April 2023, p 15.



Submitters questioned the role of Native Title registered bodies in the Path to Treaty process.<sup>93</sup> The Gur A Baradharaw Kod (GBK) Torres Strait Sea and Land Council stated:

We are highly concerned that The Bill does not indicate that Torres Strait Islander polities and Aboriginal polities represented through Native Title entities will be accounted for in the structure of the Treaty Institute. In the Torres and Endeavour Straits, we continue to build our governance capabilities through the Native Title framework. This work has occurred over a period of 30 years and ought to be built on in the pursuit of a Treaty-making framework. We expect, in good faith, that the Treaty Institute will be sufficiently independent from government interests and prioritise engagement with Native Title entities to carry out its functions effectively and efficiently.<sup>94</sup>

One participant at a public forum raised the issue of whether treaties will be negotiated with traditional owners or Native Title prescribed bodies and what will happen with communities that do not have traditional owners or Native Title prescribed bodies.<sup>95</sup>

Ms Buchanan, co-chair of the ITTB, stated that the Path to Treaty process could be healing:

In terms of healing there could not be a greater thing, because what Native Title did was divide families. Brothers and sisters did not talk to each other and so on. It has a huge negative impact on people. There were some positives, but there is a lot to be mended in terms of how that Native Title process has affected our First Nations groups.<sup>96</sup>

#### **Committee comment**

The committee acknowledges the concerns of submitters and participants at public forums in relation to Native Title.

The committee is of the view that the Path to Treaty process may have a significant impact in addressing issues associated with Native Title.

#### **Recommendation 4**

The committee recommends that the Queensland Government continues to support the resolution of Native Title matters that will assist to facilitate the making of Treaties.

#### **Recommendation 5**

The committee recommends the Queensland Government articulate a clear and transparent framework when negotiating treaties where there may be established Native Title prescribed body corporates, traditional owners, cross border communities (gathered around state borders), local community interests and displaced First Nations people.

### **3.2.2 Implementation process**

The Bill sets out specific periods for the implementation of the proposals in the Bill including:

- the Treaty Institute and the Treaty Institute Council are established: cls 2, 9 and 15

<sup>93</sup> Submissions 8 and 19.

<sup>94</sup> GBK Torres Strait Sea and Land Council, submission 19, p 3.

<sup>95</sup> Dan Carter, public forum transcript, Longreach, 23 March 2023, p 8.

<sup>96</sup> Public hearing transcript, Brisbane, 13 March 2023, p 6.

- the Minister must, within one month after the commencement, prepare the terms of reference for the Inquiry: cl 65
- the Minister must, within 3 months after the commencement, establish the Inquiry: cl 64
- the Treaty Institute Council must, within 6 months before the day the inaugural period ends, give the Minister the inaugural report about the performance of the functions of the Treaty Institute and the Treaty Institute Council and the process for appointing a member to the Treaty Institute Council: cl 48
  - the inaugural period ends 2 years after cl 9 commences: Schedule 1
- the Inquiry must, before its term ends, give the Minister a written report on the Inquiry's findings: cl 88
  - the Inquiry's term ends not more than 3 years after the establishment of the Inquiry but may be extended: cl 64
- the Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report: cl 88(3)
- the Minister must, as soon as reasonably practicable after tabling the report, prepare a response to the report and give the response to the Premier: cl 88(4)
- the Minister must ensure a review of the operation and efficacy of the Act is conducted within 5 years after the commencement: cl 94(1)
- the Minister must table in the Legislative Assembly a report on the outcome of the review as soon as practicable after the review is completed: cl 94(4).

Refer to the timeline below.

## Timeline of actions proposed in the Path to Treaty Bill

Inaugural Period (ends 2 years after commencement)					Balance of Period	
	Commence- ment	1 month	3 months	2 years	3 years and 3 months	5 years
Treaty Institute	Institute and Council established			Inaugural Report <i>Due 6 months before Inaugural Period ends</i>		Review of Act conducted and Minister to table to table review
Truth- telling and Healing Inquiry		Terms of Reference published	Inquiry established	Written report - Minister to table & provide response <i>Due within 3 years of establishment</i>		

Source: prepared by the secretariat on the basis of the Bill

### 3.2.2.1 *Time for the Inquiry*

A number of submitters expressed concerns about the time proposed in the Bill for the completion of the Inquiry.<sup>97</sup>

Some submitters suggested that the Bill should include a 5-year timeline for the completion of the Inquiry.<sup>98</sup>

Submitters presented the following in support of an extended timeline:

- the Inquiry's mandate is a significant one, covering a wide range of issues<sup>99</sup>
- Victoria's Yoorrook Justice Commission was established in 2021 and due to provide a final report in 2024 but has requested a 2-year extension to complete its mandate<sup>100</sup>
- having regard to Queensland's geographical size, 2 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 it may be necessary to reconsider the 3-year timeframe<sup>101</sup>
- timelines are not achievable, particularly if respect is given to cultural traditions and the enormity of the task ahead including preparing Aboriginal and Torres Strait Islander communities and nations for truth-telling<sup>102</sup>
- such limited timelines do not recognise or respect First Nations ways of decision making<sup>103</sup>
- there is a risk that some communities may not engage if they think this is not serious or their decision-making processes are not being treated with respect.<sup>104</sup>

An example of this last concern was articulated by a participant at the public forum in Woorabinda, who stated:

I just do not have trust in the government until I see some good actions and meaningful actions and truthful dialogue. I do not want to be governed and I don't want my kids or future generations or family to ever be oppressed again. This is our country. We need to be given the rights to govern ourselves. When I say that, give us the money. We have the answers for our own problems.<sup>105</sup>

*Having waited 164 years it would seem reasonable to wait for a period longer than 3 years to get this right.*

IMAN Wardingarri Aboriginal Corporation, submission 28, p 4.

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<sup>97</sup> Submissions 4, 6, 9, 16, 22, 28, 31, 32.

<sup>98</sup> Submissions 4, 31, 32; QHRC, public hearing transcript, Brisbane, 27 March 2023, pp 9-10.

<sup>99</sup> Castan Centre for Human Rights Law, submission 4.

<sup>100</sup> Submissions 4, 31, 32.

<sup>101</sup> Submissions 6 and 32. See also QHRC, public hearing transcript, Brisbane, 27 March 2023, pp 6, 9-10; Bob Smith, public hearing transcript, Inala, 17 April 2023, p 17.

<sup>102</sup> IMAN Wardingarri Aboriginal Corporation, submission 28.

<sup>103</sup> QLS, submission 32.

<sup>104</sup> QHRC, public hearing transcript, Brisbane, 27 March 2023, p 10.

<sup>105</sup> George Blair, public forum transcript, Woorabinda, 24 March 2023, p 7. See also public forum transcript, Rockhampton, 24 March 2023, p 12; public forum transcript, Rockhampton, 24 March 2023, p 20.

The ITTB noted that the TAC report recommended the 3-year term for the Inquiry on the following basis:

A defined timeframe for a truth-telling process of three years based on international best practice appeared to be optimal to provide sufficient time for the Queensland Government to access existing work and research to support chronicling the colonisation of Queensland.<sup>106</sup>

The ITTB also noted that the term of the Inquiry can be extended, if required.<sup>107</sup>

This was also reflected in comments by the department that cl 64(3) provides that the Minister may extend the term of the Inquiry if the Inquiry gives the Minister a notice asking the Minister to extend the term and stating the proposed period of the extension and stating the reasons for the extension or, on the Minister's own initiative.<sup>108</sup>

The ITTB, in its supplementary submission, recommended cl 64(2) be amended to state that the Inquiry must be established for a term of not more than 5 years.<sup>109</sup> The ITTB stated that it would be 'preferable to establish the Inquiry with a five-year timeframe and greatly lessen the prospect of further extensions being sought.'<sup>110</sup> The ITTB stated that this change would also require a change to cl 87 to provide a report to the Minister after 3 years of the Inquiry to 'provide advice as to progress and whether all of the final two years will be required to complete the Inquiry'.<sup>111</sup>

### **Committee comment**

The committee acknowledges the concerns of submitters in relation to the timeline for the completion of the Inquiry.

The committee is of the view that while clause 64 of the Bill adequately deals with the timeline for the Inquiry by setting the time period at 3 years but with the possibility of an extension, the suggestion of the ITTB to establish the Inquiry for a term of not more than 5 years is also appropriate. A proposed timeframe of up to 5 years balances the need for certainty of time frames and the need to ensure that the Inquiry process is able to deal with issues raised in a culturally appropriate and trauma-informed way.

### **Recommendation 6**

The committee notes the strong advocacy by a number of submitters and recommends amending clause 64(2) of the Path to Treaty Bill to state that the Truth-telling and Healing Inquiry must be established for a term of not more than 5 years.

The committee recommends an amendment to clause 88 of the Path to Treaty Bill to include a requirement that the Inquiry report to the Minister before the expiration of 3 years, to allow for a further 2-year period of operation (as required).

<sup>106</sup> ITTB, submission 21. See also public hearing transcript, Brisbane, 13 March 2023, p 6.

<sup>107</sup> ITTB, submission 21.

<sup>108</sup> Public briefing transcript, Brisbane, 13 March 2023, pp 5 and 7; DSDSATSIP, correspondence, 24 March 2023, pp 2, 4 and 10.

<sup>109</sup> ITTB, supplementary submission, p 4.

<sup>110</sup> ITTB, supplementary submission, p 4.

<sup>111</sup> ITTB, supplementary submission, p 5. See also ANTAR (National), Australian Lawyers Alliance, ANTAR QLD, submission 31, p 16.

### 3.3 First Nations Treaty Institute and the Truth-telling and Healing Inquiry

The Bill proposes to establish:

- a Treaty Institute to:
  - develop and provide a framework for Aboriginal and Torres Strait Islander peoples and the state to enter into treaty negotiations
  - support Aboriginal and Torres Strait Islander peoples to participate in treaty negotiations
- an Inquiry to inquire into, and report on, the effects of colonisation on Aboriginal and Torres Strait Islander peoples.<sup>112</sup>

As noted in section 1.2.6 and Appendix A, the committee looked to other jurisdictions with treaties or who have commenced a treaty-making process. The committee notes the mature treaty system in New Zealand, where relations between the crown and Māori have been governed by treaty since 1840. From the commencement of the *Treaty of Waitangi Act 1975* (NZ), treaty claims and disputes have been considered by the Waitangi Tribunal and negotiated by the Office for Māori Crown Relations – Te Arawhiti. During consultation with the Treaty Crown Relations – Te Arawhiti, the committee learned that enduring treaties are made with a strong mandate from the community, and a framework that embraces continuous partnership, equity and opportunity.

#### **Committee comment**

Recognising that First Nations people have endured colonisation and continued their culture for more than 50,000 years, the committee calls on the Queensland Government to avoid establishing a framework from a position of addressing deficit. Rather, the Treaty process must be framed as an opportunity for all Queenslanders to make Queensland better.

The committee encourages the Queensland Government to capture the knowledge, skills, memories and aspirations of First Nations Queenslanders during and throughout the Truth-Telling and Healing Inquiry for the benefit of all Queenslanders.

#### **Recommendation 7**

The committee recommends those responsible consider the New Zealand Waitangi Treaty framework and principles, among other jurisdictions, as models to inform the Queensland Treaty process.

#### **Recommendation 8**

The committee recommends those responsible establish the Queensland Treaty framework from a positive position of equity, opportunity and self-determination, to recognise and value the aspirations, knowledge and skills of First Nations people for the betterment of Queensland and the broader Queensland community.

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<sup>112</sup> Explanatory notes, p 2; Bill, cl 5.

### 3.3.1 First Nations Treaty Institute

Some concern was expressed in relation to the use of the term ‘institute’ for the Treaty Institute.<sup>113</sup>

*We are institutionalised in dormitories; we are institutionalised in prison; we are institutionalised in mental health. That is why it is a horrible word.*

George Blair, public forum transcript, Woorabinda, 24 March 2023, p 12.

#### **Committee comment**

The committee acknowledges the potential hurt that our First Nations people and communities may associate with the use of the term ‘institute’ for the Treaty Institute.

#### **Recommendation 9**

The committee recommends that the responsible Minister reconsider the use of the word ‘institute’ in the First Nations Treaty Institute and the Treaty Institute Council, and consider renaming the First Nations Treaty Institute and the Treaty Institute Council.

### 3.3.2 Appointments to the First Nations Treaty Institute Council and the Truth-telling and Healing Inquiry

#### 3.3.2.1 Treaty Institute Council

The Bill proposes to establish the Treaty Institute Council as the governing body of the Treaty Institute.<sup>114</sup>

Clause 19 of the Bill deals with appointments to the Treaty Institute Council:

- the 10 members of the Treaty Institute Council are to be appointed by the Governor in Council on the recommendation of the Minister
- the Minister may recommend a person as a member only if:
  - the person is an Aboriginal person or a Torres Strait Islander person
  - the Minister is satisfied the person is appropriately qualified
- the Minister must have regard to:
  - whether the membership of the Treaty Institute Council reflects the cultural diversity of Aboriginal peoples and Torres Strait Islander peoples and the gender diversity of Queensland
  - after the inaugural period ends, any recommendations contained in the inaugural report in relation to the appointment of a member to the Treaty Institute Council.<sup>115</sup>

Clause 24 provides that a member of the Treaty Institute Council must, in performing the member’s duties and functions, act independently and in the public interest, having particular regard to the interests of Aboriginal peoples and Torres Strait Islander peoples.

<sup>113</sup> Michele Leisha, public forum transcript, Woorabinda, 24 March 2023, p 12; George Blair, public hearing transcript, Woorabinda, 24 March 2023, p 12.

<sup>114</sup> Bill, cl 15.

<sup>115</sup> Bill, cl 48.

### 3.3.2.2 *Truth-telling and Healing Inquiry*

The Bill proposes to establish a board of inquiry, the Inquiry.<sup>116</sup>

Clause 67 of the Bill deals with Inquiry members:

- the 5 members of the Inquiry are to be appointed by the Governor in Council on the recommendation of the Minister
- the Minister must ensure:
  - the membership reflects the gender diversity of Queensland
  - at least one member is an Aboriginal person
  - at least one member is a Torres Strait Islander person
  - the majority of the members are Aboriginal persons or Torres Strait Islander persons
  - at least one member is a lawyer of 5 years standing who the minister considers has experience relevant to the functions of the Inquiry
- the Minister may recommend a person for appointment only if the Minister is satisfied that person is suitable for appointment due to the person's experience and standing in the Aboriginal community or the Torres Strait Islander community.

Clause 71 provides that a member of the Inquiry must, in performing the member's duties and functions, act independently and in the public interest, having particular regard to the interests of Aboriginal peoples and Torres Strait Islander peoples.

### 3.3.2.3 *How members are appointed*

Submitters raised concerns in relation to the involvement of First Nations communities in the appointment of members to the Treaty Institute Council and the Inquiry.<sup>117</sup>

One submitter suggested that the Bill should include a requirement that the Minister consult with First Nations communities in the process of shortlisting and recommending members of the Treaty Institute Council and Inquiry.<sup>118</sup> Another submitter stated that the 'responsibility for the appointment of the Institute Council be, as previously recommended, the responsibility of First Nations representative mechanisms and structures.'<sup>119</sup>

The ITTB stated that, while the TAC report recommended the governance of the Treaty Institute should be in the hands of individuals who have been chosen to represent and have the support of First Nations people, this representative structure may take some time to develop. As such, the appointment of the Treaty Institute Council by the Minister is to be seen as an interim process.<sup>120</sup>

Several submitters commented that it is critical that an open process is undertaken in appointing members to the Inquiry and that First Nations communities are involved in the selection process.<sup>121</sup> A submitter stated that 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.'<sup>122</sup>

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<sup>116</sup> Bill, cl 64.

<sup>117</sup> Submission 9, 16, 19, 23, 28, 31, 33 and 39.

<sup>118</sup> QIFVLS, submission 23.

<sup>119</sup> QNMU, submission 16, p 3.

<sup>120</sup> ITTB, submission 21.

<sup>121</sup> Submissions 21, 28 and 31.

<sup>122</sup> IMAN Wardingarri Aboriginal Corporation, submission 28, p 2.



The department stated that the initial appointments are by the Governor in Council on the Minister's advice, giving time to 'build in a more representative sort of appointment process'.<sup>123</sup> The department further stated:

You need that initial group to be able to have the co-design discussions with government about what that might look like in terms of representative structures going forward. That is why the proposal in the bill is for a two-year appointment period with advice to government after 18 months around what that might look like in terms of representative structures going forward.<sup>124</sup>

### **Committee comment**

The committee acknowledges the concerns of submitters in relation to the appointment of members to the Treaty Institute Council and the Inquiry.

The committee is of the view that it is appropriate that the initial appointments to the Treaty Institute Council are made by the responsible Minister. The committee notes with approval that appointments to the Treaty Institute Council after the inaugural period will be made by reference to any recommendations contained in the inaugural report in relation to the appointment of a member to the Treaty Institute Council.

The committee urges the responsible Minister to consult widely with First Nations communities in selecting members for appointment to the Treaty Institute Council and the Inquiry.

#### **3.3.2.4 Who may be appointed**

The Bill encourages both cultural and gender diversity in appointments to the Treaty Institute Council and the Inquiry.<sup>125</sup>

The Queensland Government states that these eligibility requirements 'prevent access to these roles for anyone of a different race' and engage the right to equality and non-discrimination under s 15(3) and (4) of the HRA and the right to access to the public service on general terms of equality under s 23(2)(b) of the HRA.<sup>126</sup> Section 15 of the HRA provides for substantive equality, not just formal equality. Section 15(5) of the HRA makes provision for special measures to redress disadvantage.

The Queensland Government further stated:

The purpose of restricting access to these positions to Aboriginal or Torres Strait Islander people is to ensure that the truth-telling and treaty negotiation processes are controlled by Indigenous people. Empowering Indigenous people in this way serves to assist or advance Indigenous Queenslanders as a whole. There can be no doubt that Indigenous Queenslanders are disadvantaged by the historic and ongoing process of colonisation. Finally, their disadvantage arises from that long history of systemic discrimination.<sup>127</sup>

The Queensland Government concluded that the eligibility requirements are special measures and do not limit the rights of non-discrimination and equal access to the public service.<sup>128</sup>

Submitters' comments on the composition of the Treaty Institute Council included:

- the Treaty Institute Council should be limited to 7 members including a '[c]oroner with international experience investigating and reporting on cases of genocide' and '[t]wo

<sup>123</sup> Public briefing transcript, Brisbane, 13 March 2023, p 5.

<sup>124</sup> Public briefing transcript, Brisbane, 13 March 2023, p 8.

<sup>125</sup> Bill, cls 19 and 67.

<sup>126</sup> Statement of compatibility, p 5.

<sup>127</sup> Statement of compatibility, p 6.

<sup>128</sup> Statement of compatibility, p 6.

international Indigenous experts ... with experience in a treaty design or negotiation processes<sup>129</sup>

- the composition of the Treaty Institute Council should reflect regional perspectives<sup>130</sup>
- one member of the Treaty Institute Council should be a young person.<sup>131</sup>

*I do agree ... [with] subcommittees. I am part of the First Nations Youth Council and we have found that the Townsville First Nations Youth Council has worked really well having the subcommittees that work in little action groups.*

Ms Arika Appleby, public forum transcript, Townsville, 22 February 2023, p 24.

In its response to submissions, the department stated the representation of young people could be a consideration in the report from the Treaty Institute Council in relation to the model or process for selecting members in the longer term.<sup>132</sup>

### **Committee comment**

The committee accepts that limiting appointment to the Treaty Institute Council to Aboriginal and Torres Strait Islander peoples is a special measure to redress disadvantage under s 15(5) of the *Human Rights Act 2019*.

The committee encourages the responsible Minister, in making appointments to the Treaty Institute Council, to consider geographical representation and a diversity of age groups.

#### **3.3.2.5 Eligibility requirements**

Some submitters expressed concern that the Bill proposes that members can only be appointed to the Treaty Institute Council if the Minister is satisfied they are appropriately qualified but the Bill does not include any qualifications for members appointed to the Treaty Institute Council.<sup>133</sup>

The ITTB stated that the ITTB, in consultation and engagement with First Nations communities on the inaugural Treaty Institute Council will elicit views on how the Minister should make recommendations for appointments of members and ‘how life should be given’ to the appropriately qualified requirement.<sup>134</sup>

### **Committee comment**

The committee accepts that the meaning of the phrase ‘appropriately qualified’ will necessarily evolve over the life of the Treaty Institute Council.

#### **Disqualification**

Treaty Institute Council members and senior executive officers are disqualified from becoming or continuing as a member or senior executive officer if they have a conviction, other than a spent conviction, for an indictable offence.<sup>135</sup>

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<sup>129</sup> Robert Heron, submission 3, p 1.

<sup>130</sup> Submissions 16 and 19.

<sup>131</sup> QATSICPP, submission 20.

<sup>132</sup> DSDSATSIP, correspondence, 24 March 2023, p 10.

<sup>133</sup> Submissions 7 and 19.

<sup>134</sup> Submission 21, p 15.

<sup>135</sup> Bill, cl 55(1)(d).

The Bill also proposes the following in relation to a person's criminal history:

- a request may be made to the commissioner of the police service for a written criminal history report (cl 60)
- a person who does not consent to a request being made to the commissioner of the police service for a written criminal history report is disqualified from becoming or continuing as a member or senior executive officer (cl 55(1)(e))
- a Treaty Institute Council member or senior executive officer who is charged with or convicted of an indictable offence during the term of their appointment must immediately give notice of the charge or conviction (cl 61).

The explanatory notes state:

The impact these provisions may have on an individual's right to privacy and confidentiality are considered justified as they are necessary to ensure the Treaty Institute Council performs its functions with honesty and integrity and upholds public trust and confidence in the Treaty Institute Council and its members.

The requirement for criminal history information and confidential information to be provided and disclosed is necessary to ensure members of the Institute Council and the Inquiry are appropriately suitable and qualified to ensure the integrity of the respective entities and needs to take precedence over a person's right to privacy.<sup>136</sup>

The position of the Queensland Government, as set out in the explanatory notes, is that the requirement to notify the Minister is not viewed as breaching fundamental legislative principles (FLPs) as it only requires a person to notify of a specific event, namely being charged with, or convicted of, an indictable offence.<sup>137</sup> The explanatory notes further state:

... the requirement to notify is not considered to infringe a person's rights of natural justice or procedural fairness in responding to the matter. This provision is justified because it reinforces the expectation that council members and the chief executive officer are to observe ethical and legal behaviour in carrying out their functions. The rights and liberties of the person are protected because the provision allows for the person to have a reasonable excuse for noncompliance. The information in the notice is also required to be kept confidential by a person who may have access to the information, including the Minister, council member of the Treaty Institute Council, senior executive officer or a public service employee performing functions under or relating to the administration of the Bill.<sup>138</sup>

The Bill also includes provisions to ensure the criminal history information is appropriately dealt with.<sup>139</sup>

Submitters expressed concerns about the disqualification of a member due to a conviction, other than a spent conviction, for an indictable offence.<sup>140</sup> The QHRC submitted:

Automatic disqualification may be arbitrary and not compatible with rights to recognition and equality before the law, taking part in private life, and to privacy. The Commission considers that criminal history checks may disproportionately disadvantage Aboriginal and Torres Strait Islander applicants who are recognised as strong community leaders but have been involved in the criminal justice system in the past. These applicants may have unique perspectives and value to bring to the role from a lived-experience perspective.

<sup>136</sup> Explanatory notes, pp 9-10.

<sup>137</sup> Explanatory notes, p 7.

<sup>138</sup> Explanatory notes, p 7.

<sup>139</sup> Explanatory notes, p 10; Bill, cls 60-3.

<sup>140</sup> Submissions 23 and 32.

The Commission understands the justification that the integrity and propriety of the Treaty Institute is vital and may take precedence over the protection of individual human rights. However, automatic disqualification of a person from sitting on the Treaty Institute Council because of their criminal history, without consideration of any other circumstances, is not necessary to achieve that purpose, and could be achieved in a way that is less restrictive of human rights.<sup>141</sup>

This was echoed by other submitters.<sup>142</sup>

The Queensland Government, in its response to submissions, stated that this was considered by the ITTB and the agreed outcome was cl 55, which is in keeping with other Queensland legislation.<sup>143</sup> The ITTB stated:

The issue about being disqualified to be a council member based on criminal record and the like is a tricky one ... Obviously we know statistically that during the interplay with the criminal justice system this impacts more severely on First Nations people than it does on the broader community. The offences are serious offences that are prescribed in the bill. They are not lower level offences. ... We think the bill has the balance right in terms of accountability, transparency and credibility but at the same time recognising the particular circumstances of First Nations peoples and those who may ultimately seek to serve on the institute council.<sup>144</sup>

The QHRC stated, that while the Bill was in keeping with other Queensland legislation, it should be noted that this was unique legislation and 'it really needs a bespoke approach considering the historical and ongoing over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system.'<sup>145</sup>

Submitters suggested various alternatives, including:

- criminal histories could be required to be considered as one aspect of weighing up suitability for the role<sup>146</sup>
- the Bill could include a show-cause provision or other mechanism where a prospective member could demonstrate how they have rehabilitated themselves.<sup>147</sup>

*Suspension and removal of Treaty Institute Council members and removal of senior executive officers*

Clauses 52-54 of the Bill make provision for a member of the Treaty Institute Council to be suspended and removed and for a senior executive officer to be removed.

Clause 52 states:

- (1) This section applies if a member of the Treaty Institute Council (the first member) considers another member of the Council (the other member) should be suspended from office because—
  - (a) there is an allegation of misconduct against the other member; or
  - (b) the first member is satisfied a matter has arisen in relation to the other member which may be grounds for removal under section 53 or disqualification under section 55.

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<sup>141</sup> Submission 6.

<sup>142</sup> QIFVLS, submission 23, p 5.

<sup>143</sup> DSDSATSIP, correspondence, 24 March 2023, pp 4 and 10.

<sup>144</sup> Public hearing transcript, Brisbane, 13 March 2023, p 8.

<sup>145</sup> Public hearing transcript, Brisbane, 27 March 2023, p 9.

<sup>146</sup> Submissions 6 and 32.

<sup>147</sup> QIFVLS, submission 23.

The Treaty Institute Council may decide, by special resolution,<sup>148</sup> to suspend the other member from office.<sup>149</sup> If the Treaty Institute Council resolves to suspend a member, the Treaty Institute Council must:

- give the member a notice stating the reason for the suspension and the period of the suspension (not more than 60 days)
- give the Minister notice of the suspension.<sup>150</sup>

The Governor in Council may, on the Minister's recommendation, remove a member of the Treaty Institute Council from office if the Minister is satisfied the member has engaged in certain conduct or is incapable of performing their functions or has neglected their duties or performed them incompetently. The Minister may consult with the Treaty Institute Council in considering whether to make a recommendation.<sup>151</sup>

The Treaty Institute Council may remove a senior executive officer from office if satisfied the officer:

- has engaged in:
  - inappropriate or improper conduct in an official capacity, or
  - inappropriate or improper conduct in a private capacity that reflects seriously and adversely on the office, or
- is incapable of performing the functions or responsibilities of the office, or
- has neglected their duties or performed them incompetently.<sup>152</sup>

### 3.3.2.6 *Fundamental legislative principles and human rights considerations*

The grounds for removal raise the issue of whether the Bill has sufficient regard for the rights of individual through their consistency with natural justice principles.<sup>153</sup>

The explanatory notes advise that these provisions are inconsistent with the principles of natural justice but are nevertheless justified:

It is considered that, having regard to the significance of the role of council members and the chief executive officer and the responsibilities each role entails, a breach of this natural justice principle is justified. Including as grounds for removal the failure to disclose a material personal interest by a council member, or failure to disclose a conflict of interest for the chief executive officer, will assist in minimising the risk of such conflicts interfering with the functions of the Treaty Institute Council. As the Bill explicitly states the roles and responsibilities of council members and the chief executive officer in upholding the significant public trust invested in the Treaty Institute Council, these offices should be held to high standards of integrity and propriety, and the automatic disqualification of a person from office where they meet one of these criteria is considered appropriate.<sup>154</sup>

<sup>148</sup> 'Special resolution' means a resolution that is passed by a two-thirds majority of the members of the Treaty Institute Council: Bill, cl 52(7).

<sup>149</sup> Bill, cl 52(3).

<sup>150</sup> Bill, cl 52. The Treaty Institute Council may, by special resolution, revoke the suspension because the reason for the suspension no longer exists.

<sup>151</sup> Bill, cl 53.

<sup>152</sup> Bill, cl 54.

<sup>153</sup> Explanatory notes, pp 5-6.

<sup>154</sup> Explanatory notes, p 6.

Regarding the principle of natural justice and the process of suspension of a Treaty Institute Council member, the department noted the natural justice principle applies as a matter of law,<sup>155</sup> and stated:

This principle is reflected in clause 52 (2), allowing for the person to be notified of the potential for a decision to be made; clause 52(3), allowing for a fair hearing of the evidence before the decision is made; and clause 52(4), allowing for the affected person to be give a statement reasons... Suspension/cancellation/expulsion/removal are a common feature of administrative decisions, and the approach taken in clause 52 of the Bill is similar to examples such as Hospital and Health Boards Act 2011, s 27A; and Health Ombudsman Act 2013, s 251.<sup>156</sup>

The department also noted that the Bill would require the Treaty Institute to develop policies, which may include a detailed natural justice policy to complement the provision relating to suspensions.

The proposed requirement for a member of the Treaty Institute Council or a senior executive officer to notify the Minister if they are charged during the term of their appointment, identify the alleged offence and when it was alleged to have been committed, unless they have a reasonable excuse, raises a potential issue of FLP relating consistency with the principles of natural justice,<sup>157</sup> and engages the human right to the presumption of innocence.<sup>158</sup>

The explanatory notes provide the following justification:

The requirement to notify the Minister is not viewed as breaching fundamental legislative principles as it only requires a person to notify of a specific event, namely being charged with, or convicted of, an indictable offence.

...

The matters required in the notice do not implicate the person or make any finding, or any inference, of fact or guilt in relation to the charge. Therefore, the requirement to notify the relevant official is not considered to infringe a person's rights of natural justice or procedural fairness in responding to the matter. This provision is justified because it reinforces the expectation that council members and the chief executive officer are to observe ethical and legal behaviour in carrying out their functions. The rights and liberties of the person are protected because the provision allows for the person to have a reasonable excuse for noncompliance.<sup>159</sup>

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<sup>155</sup> Kathy Parton, Acting Director-General, DSDSATSIP, correspondence, 21 March 2023, p 1.

<sup>156</sup> Kathy Parton, Acting Director-General, DSDSATSIP, correspondence, 21 March 2023, p 1.

<sup>157</sup> LSA, s 4(3)(b).

<sup>158</sup> *Human Rights Act 2019*, s 32(1).

<sup>159</sup> Explanatory notes, p 7.

**Committee comment**

To ensure public trust in the Treaty Institute Council, the committee believes Treaty Institute Council members and the senior executive officers must be held to high standards of integrity and propriety.

In this regard, the committee considers the potential impact on an individual's right to privacy and confidentiality of the provisions relating to criminal history provisions to be justified. The committee notes the safeguards contained in the Bill regarding the handling of confidential information, including a proposed new offence for disclosing confidential information.

The committee notes that the approach taken in the provisions relating to the suspension and removal of members of the Treaty Institute Council and removal of senior executive officers in the Bill is similar to that taken in other Queensland legislation.

The committee is satisfied the provisions have sufficient regard to the rights of individuals and are compatible with human rights under the *Human Rights Act 2019*.

**Committee comment**

The committee holds concern over the Bill's provisions whereby Treaty Institute Council members and senior executive officers are disqualified from becoming or continuing as a member or senior executive officer if they have a conviction, other than a spent conviction, for an indictable offence.

The committee understands the importance of the Treaty Institute Council and that it must be, and be seen to be, an organisation that is accountable, transparent and credible.

The committee accepts that the disqualification is in relation to serious offences, that is, indictable offences.

However, in the context of the over-representation of First Nations people in the criminal justice system, the committee is of the view that a more tailored disqualification provisions would be appropriate.

**Recommendation 10**

The committee recommends clause 55(1)(d) of the Path to Treaty Bill be omitted.

The committee recommends that a new provision be included in the Path to Treaty Bill providing that a person's criminal history be taken into account in making appointments to the Treaty Institute Council and senior executive.

**3.3.3 Independence of the First Nations Treaty Institute Council and the Truth-telling and Healing Inquiry**

Clause 18 of the Bill provides that the Treaty Institute Council must act independently in performing its functions and exercising its powers and that it is not subject to direction by any person, including the Minister.

Other clauses of the Bill relevant to the independence of the Treaty Institute and the Treaty Institute Council include:

- Treaty Institute does not represent the state (cl 11)
- Application of other Acts (cl 12)

- Members to act independently and in public interest (cl 24).

Submitters raised concerns about the independence of the Treaty Institute Council and the Inquiry, particularly in relation to the Minister appointing members to the Treaty Institute Council and funding for the Treaty Institute Council and Inquiry.<sup>160</sup>

One submitter stated:

... how can a Council whose members are appointed by the Governor in Council on advice from the Minister be considered independent?

FAIRA [Foundation for Aboriginal and Islander Research Action] believes the Councillors must be selected by a process, either by direct elections or alternative mechanisms, where they are selected to represent First Nations' interests.<sup>161</sup>

FAIRA also stated that the 'Institute Council should be accountable to First Nations through a review/audit arrangement where representatives of First Nations annually report on the structures and procedures. This also strengthens the independence of the Council.'<sup>162</sup>

The Queensland Nurses and Midwives Union stated that, while it recognised that the status as a statutory authority provides 'safeguards around accountability', the relationship between a Minister and a statutory authority is contrary to the principle of self-determination envisaged in the Bill and the Treaty Institute.<sup>163</sup> The submission suggested that there may be other options that could be explored which would better align with the desired relationship with First Nations people.<sup>164</sup>

For further consideration of the appointments to the Treaty Institute Council, see 3.3.1. above.

The issue of how the Treaty Institute was funded was also raised as a concern in relation to the independence of the Treaty Institute.<sup>165</sup>

For further consideration of the funding of the Treaty Institute, see chapter 4 below.

Another submitter suggested that '[t]o support the independence of the Treaty Institute and the Treaty Institute Council, ... the Annual Report be provided to Parliament.'<sup>166</sup> The submission suggested this could be achieved by including wording similar to cl 48(3) in relation to the tabling of the Treaty Institute Council's inaugural report.<sup>167</sup>

The department, in its response to submissions, stated that cls 9 (Establishment), 10 (Legal status), 11, 13(3) (Functions), 18, 24 and 67 (Inquiry members) 'provide for the independence of the Institute and Council.'<sup>168</sup> The department further stated that the establishment of the Treaty Institute as a statutory authority provides it with the 'appropriate level of independence'.<sup>169</sup>

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<sup>160</sup> Submissions 4, 6, 7, 16, 18, 22, 24 and 31; Bob Smith, public hearing transcript, Inala, 17 April 2023, p 18.

<sup>161</sup> FAIRA, submission 7, p 1.

<sup>162</sup> Submission 7, p 2.

<sup>163</sup> QNMU, submission 16, p 9.

<sup>164</sup> QNMU, submission 16, p 9.

<sup>165</sup> FAIRA, submission 7.

<sup>166</sup> QIFVLS, submission 23, p 7.

<sup>167</sup> QIFVLS, submission 23.

<sup>168</sup> DSDSATSIP, correspondence, 24 March 2023, p 5.

<sup>169</sup> DSDSATSIP, correspondence, 24 March 2023, p 8.



**Committee comment**

The committee considers it essential for the integrity of the Path to Treaty process that the First Nations Treaty Institute, Treaty Institute Council and Truth-telling and Healing Inquiry are independent.

The committee is of the view that the Bill has the correct balance between independence and accountability to First Nations people, non-Indigenous Queenslanders and the Queensland Government for the First Nations Treaty Institute, Treaty Institute Council and Truth-telling and Healing Inquiry. However, the committee asserts that the annual reports of the Treaty Institute Council should be tabled in the Queensland Parliament.

**Recommendation 11**

The committee recommends clause 49 of the Path to Treaty Bill be amended to include a provision that the responsible Minister table a copy of the annual report of the Treaty Institute in the Legislative Assembly within 14 sitting days after receiving the annual report.

**3.3.4 Terms of reference**

Clause 65 of the Bill proposes that the Minister must, within one month after the commencement, prepare the terms of reference for the Inquiry and give the terms of reference to the chief executive.

The explanatory notes stated that the functions and objectives of the Inquiry will be ‘further detailed in the Inquiry’s Terms of Reference and will include promoting public awareness, informing education and developing shared understandings of Aboriginal and Torres Strait Islander peoples’ cultures, histories, languages and traditions’.<sup>170</sup> They further stated that:

In developing the terms of reference, the Minister may consult with any person the Minister considers has the skills, knowledge or experience relevant to the functions of the Inquiry, in particular, Aboriginal and Torres Strait Islander peoples. The terms of reference must include the matters that the Inquiry must have regard to in performing its functions, other than those matters already set out in the Bill.<sup>171</sup>

Submitters expressed a range of views on the Minister preparing the terms of reference for the Inquiry.

One submitter was supportive of the approach set out in the explanatory notes, but noted that cl 65 did not specifically mention that the Minister would consult with Aboriginal and Torres Strait Islander peoples. It suggested that an explicit reference to engagement with First Nations communities should be reflected in cl 65.<sup>172</sup>

A number of submitters expressed concerns about the terms of reference being prepared by the Minister.<sup>173</sup>

The ITTB stated that there are 3 principal areas, including the Inquiry terms of reference, that require further consultation and, as such, are not included in the Bill. The ITTB attested that it would develop proposals for the Minister on the Inquiry’s terms of reference and engage and consult with First Nations communities and the wider Queensland community. They further stated that the terms of

<sup>170</sup> Explanatory notes, p 4.

<sup>171</sup> Explanatory notes, p 28.

<sup>172</sup> QIFVLS, submission 23. See also ANTAR (National), Australian Lawyers Alliance, ANTAR QLD, submission 31.

<sup>173</sup> Submission 16.

reference should recognise the relationship between truth-telling and treaty.<sup>174</sup> This was reiterated by the department in its response to submissions and in the public briefing.<sup>175</sup>

### **Committee comment**

The committee accepts the assurances of the department and the ITTB that Aboriginal and Torres Strait Islander peoples and the wider Queensland community will be consulted in the preparation of the terms of the reference for the Inquiry.

The committee considers the terms of reference should include promoting public awareness, informing, educating and developing shared understandings of Aboriginal and Torres Strait Islander peoples' cultures, histories, languages and traditions. Further, the terms of reference should explicitly recognise the relationship between truth-telling and treaty.

The committee considers that as part of a Treaty between a community and the Queensland Government, there should be an apology for specific historical wrongs with that community, which would provide an important healing process.

The committee asserts that the education system is a very important part of Treaty to acknowledge history and to educate future generations. The education system and a fulsome Queensland curriculum can normalise First Nations language and culture to educate the Queensland community.

The committee recognises the immense value of the stories heard, research gathered and evidence taken during the Truth-telling and Healing Inquiry process, as a historical record and a reference for future generations.

### **Recommendation 12**

The committee recommends the terms of reference for the Truth-telling and Healing Inquiry should explicitly recognise the relationship between truth-telling and treaty.

### **Recommendation 13**

The committee acknowledges the important role education plays in creating an accurate historical discourse and in normalising language and culture and recognises that it is the Queensland Government's responsibility to educate the Queensland community. The committee recommends the Queensland school curriculum reflects the shared history of the State of Queensland.

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<sup>174</sup> ITTB, submission 21. See also ITTB, public hearing transcript, Brisbane, 13 March 2023, p 3.

<sup>175</sup> DSDSATSIP, correspondence, 24 March 2023, p 10; public briefing transcript, Brisbane, 13 March 2023, p 5.

**Recommendation 14**

The committee acknowledges the importance of the evidence provided throughout the Truth-telling and Healing Inquiry as a key resource in capturing Queensland's shared history and that it should be published as a legacy for future generations.

The committee recommends that the recording of this evidence during the Inquiry process be managed appropriately, reflecting trauma informed approaches, cultural sensitivities and protection of intellectual property, and with respect for personal requests for anonymity.

**3.3.5 Compulsion to produce documents to the Truth-telling and Healing Inquiry**

Clause 80 of the Bill proposes that the Inquiry 'may, by notice given to the entity, invite' the entity to give the Inquiry a document or other thing that may assist the Inquiry in performing its functions. Clause 81 provides for the Inquiry to give production notices if the chief executive officer of a government entity fails to comply with a notice under cl 80. Clause 83 sets out the grounds for non-compliance with a production notice under cl 81, including:

- the government entity does not hold the document or thing
- the document or thing contains personal information
- the document or thing is subject to legal professional privilege
- the document or thing is subject to public interest immunity
- disclosing the document or thing may disclose commercial-in-confidence information
- disclosing the document or thing may prejudice certain proceedings.

Clause 85 of the Bill proposes that the Inquiry can conduct a truth-telling hearing if a person does not respond to a production notice or does not provide the materials or submission requested in a production notice.

Clause 86 proposes to make it an offence (with a maximum penalty of 100 penalty units, or \$14,375.00)<sup>176</sup> if a person is given an attendance notice and the person fails to attend or to continue to attend until excused from further attendance.

'Government entity' is defined in Schedule 1 of the Bill as 'see the *Public Sector Act 2022*, section 276.' Section 276(1) of the *Public Sector Act* defines a government entity as:

- (a) a public service entity or part of a public service entity; or
- (b) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act or under State authorisation for a public or State purpose; or
- (c) a part of an entity mentioned in paragraph (b); or
- (d) another entity, or part of another entity, prescribed by regulation to be a government entity; or
- (e) a registry or other administrative office of a court of the State.

Section 276(2) of the *Public Sector Act* provides each of the following is not a government entity:

- (a) a local government;
- (b) a corporation owned by a local government, or a subsidiary of a corporation owned by a local government;

<sup>176</sup> The current value of a penalty unit \$143.75: Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, ss 5, 5A.

- (c) the parliamentary service established under the *Parliamentary Service Act 1988*;
- (d) the Governor's official residence (known as 'Government House') and its associated administrative unit;
- (e) the Executive Council;
- (f) the Legislative Assembly;
- (g) a court of the State;
- (h) the police service to the extent that it does not include staff members mentioned in the *Police Service Administration Act 1990*, section 2.5(1)(a);
- (i) a school council established under the *Education (General Provisions) Act 2006* or a university established under an Act;
- (j) a co-operative under the Co-operatives National Law (Queensland) for primary producers that is not in receipt of moneys of, or financial assistance from, the State;
- (k) a government owned corporation, unless a regulation declares it to be a government entity;
- (l) another entity, or part of another entity, prescribed by regulation not to be a government entity.

The explanatory notes state the Inquiry would have limited compulsion powers directed towards the participation of and production of information or documents from government agencies only.<sup>177</sup> 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>178</sup>

The explanatory notes conclude that:

Truth-telling is critical to reframing the relationship between First Nations peoples and non-Indigenous Queenslanders. This truth-telling process cannot be comprehensively undertaken unless every opportunity to gather documents to inform the truth are exhausted.<sup>179</sup>

The QHRC recommended that grounds for non-compliance with a production notice under cl 81 that a document or thing contains personal information as set out in cl 83(a)(ii) should be narrowed, stating:

For example, a more balanced ground for refusal could be where disclosure would reasonably be expected to cause the individual harm, or the individual has refused consent for the information to be disclosed. Alternatively, the Commission recommends that if the document or thing contains personal information, then the document or thing must be provided to the Inquiry with the personal information redacted, or else a summary of the information must be provided in a way that does not disclose personal information.<sup>180</sup>

The department, in its response to submissions, stated that the grounds for non-compliance with a production notice were considered in detail by the ITTB and that the agreed outcome was cl 83.<sup>181</sup>

In relation to the entities to which this applies, the QHRC submitted that this does not include many entities and organisations which have had 'significant involvement in the histories and experiences of Queensland First Nations people, including local governments, the Queensland Police Service (QPS), missionaries and other faith-based service providers, and other organisations that act or have acted on behalf of the State'.<sup>182</sup> By way of example:

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<sup>177</sup> Explanatory notes, p 4.

<sup>178</sup> Explanatory notes, p 4.

<sup>179</sup> Explanatory notes, p 7.

<sup>180</sup> Submission 6.

<sup>181</sup> DSDSATSIP, correspondence, 24 March 2023, p 4.

<sup>182</sup> Submission 6, p 7. See also QHRC, public hearing transcript, Brisbane, 27 March 2023, pp 6-7 and 10.

... the Inquiry may need to investigate the removal of children to dormitories under the control of a faith-based organisation and compel the production of information and records. At present, the application of compulsion powers only to 'government entities' is too narrow. Not providing the Inquiry with adequate powers at the outset risks the effectiveness and cultural safety of the truth telling and healing process.<sup>183</sup>

In the public hearing on 27 March 2023, the Queensland Human Rights Commissioner stated that:

Given the central role of the Queensland Police Service in the brutal colonisation of Queensland and, again, using the words of the preamble, the devastating and ongoing impact of that colonisation on Aboriginal and Torres Strait Islander people, it is fundamentally important that the inquiry have the power to compel the Queensland Police Service to participate in the inquiry.<sup>184</sup>

Other submitters supported this view<sup>185</sup> and considered that the Inquiry's proposed powers of compulsion were 'inadequate'.<sup>186</sup>

The Queensland Family & Child Commission (QFCC) supported the amendment of the proposed clauses to include the QPS, stating:

The interactions between First Nations people and police in Queensland has had significant and enduring impacts, and the opportunity must be offered for truth telling and healing.<sup>187</sup>

*We further note that there does not appear to be any clause or platform for compulsion of documentation from non-government 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 non-government 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 non-government 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 non-government entities to withhold important testimony and documentation.*

IMAN Wardingarri Aboriginal Corporation, submission 28, p 5.

The department, in its response to submissions, stated that it is the 'policy intent' that the powers of the Inquiry to compel information will apply to the Commissioner of the QPS and that the Bill will be 'clarified to remove any doubt prior to the passage of the Bill'.<sup>188</sup>

The ITTB, in its supplementary submission, recommended that the definition of 'chief executive officer' in Schedule 1 Dictionary should be amended to include:

- the Commissioner of Police and the QPS

<sup>183</sup> Submission 6, pp 7-8.

<sup>184</sup> QHRC, public hearing transcript, Brisbane, 27 March 2023, pp 6-7.

<sup>185</sup> Submission 11 (supplementary submission), pp 28, 31.

<sup>186</sup> ANTAR, Australian Lawyers Alliance, ANTAR Qld, submission 31, p 14.

<sup>187</sup> Submission 11 (supplementary submission), p 1.

<sup>188</sup> DSDSATSIP, correspondence, 31 March 2023, p 1.

- the chief executive officers of ‘local government instrumentalities’.<sup>189</sup>

The ITTB further stated that:

... if non-government entities fail to fully engage in the Inquiry and provide required documents and information, public faith in the Inquiry and thereby potentially First Nation participation might be undermined.

The answer of whether wider powers will in practice be required will come from the operational experience of the Inquiry. In short, is the work or credibility of the Inquiry being hampered by the coercive powers being only available when dealing with government? For this reason, the ITTB recommends that within 12 months of the Inquiry commencing it reports to the government through the Minister on whether changes are required to its functions, operations and powers[.]<sup>190</sup>

Refer to section 3.5.3 below to further stakeholder feedback on review and reporting.

### **Committee comment**

The committee is of the view that it is essential that the power of the Inquiry to compel the production of documents and things in clause 83 and the power to compel attendance at a truth-telling inquiry in clause 85 apply to the Commissioner of the QPS. The committee notes with approval that the department has made a commitment to amend the relevant clauses prior to the passage of the Bill.

The committee is also of the view that these powers should extend to local governments and non-government organisations, including churches, to ensure the Inquiry is able to capture the full impact of colonisation on First Nations people.

### **Recommendation 15**

The committee recommends the responsible Minister consider amending clause 87 of the Path to Treaty Bill to include provision for a review 12 months after the commencement of the Inquiry to ensure the powers of the Inquiry continue to support the effective gathering of information that reveals the full impact of colonisation on First Nations people of Queensland.

#### **3.3.5.1 Fundamental legislative principle and human rights implications**

The Bill includes a new offence in cl 86. To have sufficient regard to rights and liberties of individuals, the consequences of legislation should be relevant and proportionate. In line with this, a penalty should be proportionate to the offence, and penalties within legislation should be consistent with each other.<sup>191</sup> The new offences with their maximum penalties of 100 penalty units are in step with other legislation.<sup>192</sup>

The explanatory notes state:

These provisions are consistent with the fundamental legislative principles to protect against self-incrimination as it is a reasonable excuse for an individual to refuse to answer a question or produce a document or thing if that the answer or production of the document or thing might tend to incriminate the individual or make the individual liable to a penalty.<sup>193</sup>

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<sup>189</sup> ITTB, submission 21 (supplementary submission), p 3.

<sup>190</sup> ITTB, submission 21 (supplementary submission), p 5.

<sup>191</sup> Office of the Queensland Parliamentary Counsel, *Fundamental legislative principles: the OQPC notebook* (OQPC notebook), 2008, p 120. See also LSA, s 4(2)(a).

<sup>192</sup> See for example, *Meriba Omasker Kasiw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*; *Public Guardian Act 2014* and *Health Ombudsman Act 2013*.

<sup>193</sup> Explanatory notes, p 6.

The statement of compatibility stated that ‘facilitating a truth-telling process means facilitating the right to take part in public life in s 23(1) of the *Human Rights Act* as well as freedom of expression under s 21 of the *Human Rights Act*, including “the freedom to seek, receive and impart information and ideas of all kinds”’.<sup>194</sup> As such, the Bill protects and promotes freedom of expression.<sup>195</sup>

The fact that government entities can refuse to provide a document or thing on the basis that it contains personal information or commercial-in-confidence material serves to protect the right to privacy under s 25(a) of the HRA.<sup>196</sup>

The issuing of attendance notices under cl 85 may engage or limit the following rights:

- freedom of movement: s 19 of the HRA
- freedom of expression: s 21 of the HRA
- the right to privacy: s 25(a) of the HRA.<sup>197</sup>

The statement of compatibility states that these limits on human rights are reasonable and justified under s 23 of the HRA on the basis that ‘[t]he need to have access to government-held information for truth-telling outweighs minor and tailored impacts on freedom of movement, the freedom not to express oneself and privacy.’<sup>198</sup>

### **Committee comment**

The committee is satisfied that the new offence and the related penalty have sufficient regard to the rights and liberties of individuals.

The committee is of the view that the limits on human rights in the context of the Inquiry’s ability to give production notices are reasonable and justifiable in the circumstances.

### **3.3.6 Support for stress and psychological trauma**

#### **3.3.6.1 Experience of trauma**

Many participants shared with the committee accounts of trauma they have experienced personally and their knowledge of the trauma experienced by generations of other First Nations people.<sup>199</sup>

<sup>194</sup> Statement of compatibility, p 2.

<sup>195</sup> Statement of compatibility, p 3.

<sup>196</sup> Statement of compatibility, p 3.

<sup>197</sup> Statement of compatibility, p 4.

<sup>198</sup> Statement of compatibility, pp 4-5.

<sup>199</sup> See for example: Samara Jose, public forum transcript, Cairns, 20 March 2023, p 12; Peter Lenoy, public forum transcript, Cairns, 20 March 2023, p 17; Sandi Taylor, public forum transcript, Cairns, 20 March 2023, p 18; Ernest Madua, public forum transcript, Weipa, 20 March 2023, p 2; Linda Saltner, public forum transcript, Townsville, 22 March 2023, p 10; David Saylor, public forum transcript, Townsville, 22 March 2023, pp 14-15; Tracey Hough, public forum transcript, Townsville, 22 March 2023, p 16; Tyson Cassady, public forum transcript, Townsville, 22 March 2023, p 22; Florence Onus, public forum transcript, Townsville, 22 March 2023, p 23; Kerry Thompson, public hearing forum, Longreach, 23 March 2023, p 15; Marleen Young, public forum transcript, Woorabinda, 24 March 2023, p 9; Nyoka Hatfield, public forum transcript, Rockhampton, 24 March 2023, p 4; Richard Sporne, public forum transcript, Rockhampton, 24 March 2023, pp 10-11; Rosemary Hoffman (Toby), public forum transcript, Rockhampton, 24 March 2023, pp 16-17; Barbara Hatfield, public forum transcript, Rockhampton, 24 March 2023, p 20; Beryl Meiklejohn, public hearing transcript, Inala, 17 April 2023, p 4; Kerry Charlton, public hearing transcript, Inala, 17 April 2023, p 13; Bob Smith, public hearing transcript, Inala, 17 April 2023, p 17.

*People talk about the fact that we were here for 65,000 years prior to colonisation beginning, so what you also have to acknowledge in the process as you are going around is that that is in our memory. That is in our memory bank; that is in our DNA. That is in all of the stories that have been passed down to us as individuals, families, clans and nations. In bringing that forward, that then becomes part of the 200-year story of colonisation. It is a very traumatic process because, as we know, we have only just started to talk about massacres and some of the atrocities that occurred. We are living day-to-day with statistics that are horrific.*

Cheryl Buchanan, Co-Chair, ITTB, public hearing transcript, Brisbane, 13 March 2023, pp 6-7.

In the context of this trauma, some participants emphasised the role of truth-telling and healing:

... we all hold these stories of trauma and that trauma is very deep because it is also intergenerational trauma, so the truth-telling is a very important part of this process and it should not be taken lightly, as lip-service.<sup>200</sup>

*A strong theme that runs through this treaty bill and the treaty process itself is healing. Healing could potentially be the cure or the remedy to trauma. We urge that this process goes about but we need true healing.*

David Saylor, public forum transcript, Townsville, 22 March 2023, p 15.

The committee heard from the QMHC about the potential impact of truth-telling sessions or hearings:

The truth-telling process can potentially increase psychosocial risk factors for Aboriginal peoples and Torres Strait Islander peoples and communities more broadly. This may emerge in various ways, including increased risk-taking behaviour, use of alcohol and other drugs, family or intimate partner violence, or higher incidents of self-harm and suicidality.<sup>201</sup>

### 3.3.6.2 *Truth-telling sessions or hearings*

The Bill would require the Inquiry to ‘conduct a truth-telling session or truth-telling hearing in a way that recognises the stress and psychological trauma that may be experienced by a person in giving oral testimony or making a submission to the session or hearing’.<sup>202</sup>

The Bill would require the Inquiry to make guidelines about the following matters:

- procedures for recognising whether a person is experiencing stress or psychological trauma associated with giving testimony or making a submission to a truth-telling session or truth-telling hearing
- procedures for supporting a person who may experience stress or psychological trauma associated with giving testimony or making a submission to a truth-telling session or truth-telling hearing
- procedures for preventing, reducing or mitigating stress or psychological trauma experienced by a person associated with giving testimony or making a submission to a truth-telling session or truth-telling hearing.<sup>203</sup>

In regard to these provisions relating to truth-telling sessions or hearings, submitters:

- commended the inclusion of the guidelines and procedures in the Bill<sup>204</sup>

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<sup>200</sup> Sandi Taylor, public forum transcript, Cairns, 20 March 2023, p 18.

<sup>201</sup> Submission 14.

<sup>202</sup> Bill, cl 72.

<sup>203</sup> Bill, cl 72(2).

<sup>204</sup> QHRC, submission 6, p 7; Queensland Family & Child Commission (QFCC), submission 11, p 2.



- stressed that great care must be taken in the conduct of the Inquiry given the nature of the Inquiry and ‘the trauma of those who may participate in its sessions’<sup>205</sup>
- called for truth-telling sessions to facilitate conversations with Aboriginal and Torres Strait Islander children, young people and their families in ways that are safe, accessible, and meaningful<sup>206</sup>
- highlighted the need to ensure professional, culturally appropriate, mental health support is available for people giving testimony or making a submission, before, during and after a truth-telling session or hearing<sup>207</sup>
- recommended 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<sup>208</sup>
- advocated for consideration of ‘an appropriately qualified and skilled Social and Emotional Wellbeing practitioner’ as part of an advisory committee to the Treaty Institute Council ‘to assist in informing appropriate support for individuals and communities throughout the Treaty process’<sup>209</sup>
- called for access to counselling and legal advice if requested by a participant in the Inquiry<sup>210</sup>
- recommended ‘specialised teams with unique skills in cultural capability and appropriate clinical practice along with lived experience representatives be accessible to participants in the lead-up, during and after attending truth-telling forums to support individuals through this highly challenging process’ to reduce the risk of distress during the truth-telling process.<sup>211</sup>

In response to the call by the QMHC for the consideration of an appropriately qualified and skilled social and emotional wellbeing practitioner as part of an advisory committee to the Treaty Institute Council, the department stated:

The establishment of advisory committees will be a matter for the Treaty Institute Council to consider. It may not be appropriate for members of the Council to provide direct support to individuals. The council will have the necessary powers and resources to arrange for support of mental health professionals where required. Clause 72(2) of the Bill ensures that the Inquiry must make guidelines for procedures for supporting a person who may experience stress of psychological trauma associated with the truth-telling process.<sup>212</sup>

In response to the QFCC’s call for truth-telling sessions to facilitate conversations in a safe way, the department stated that that issue related to implementation, which would be considered through the implementation phase. Further, the department stated:

Clause 72(2) requires the Inquiry to make guidelines about: procedures for recognising whether a person is experiencing stress or psychological trauma associated with giving testimony or making a submission to a truth-telling session or truth-telling hearing; procedures for supporting a person who may experience

<sup>205</sup> QNMU, submission 16, p 12.

<sup>206</sup> QFCC, submission 11, p 2.

<sup>207</sup> QHRC, submission 6, p 7. See also QHRC, public hearing transcript, Brisbane, 27 March 2023, p 9; Akira Appleby, public forum transcript, Townsville, 22 March 2023, p 24; Bob Smith, public hearing transcript, Inala, 17 April 2023, p 17.

<sup>208</sup> QHRC, submission 6, p 3.

<sup>209</sup> QMHC, submission 14, Response to proposed Bill.

<sup>210</sup> YFS Ltd, submission 15, p 2.

<sup>211</sup> QMHC, submission 14.

<sup>212</sup> DSDSATSIP, correspondence, 24 March 2023, p 7.

stress or psychological trauma associated with giving testimony or making a submission to a truth-telling session or truth-telling hearing; and procedures for preventing, reducing or mitigating stress or psychological trauma experienced by a person associated with giving testimony or making a submission to a truth-telling session or truth-telling hearing.<sup>213</sup>

### **Committee comment**

The committee recognises the impact on First Nations peoples of transgenerational trauma caused by colonisation and sincerely thanks participants for sharing their experiences with the committee.

The committee commends the inclusion of provisions in the Bill that require the Truth-telling and Healing Inquiry to make guidelines about procedures to prevent, reduce or mitigate stress or psychological trauma experienced by a person associated with giving testimony or making a submission to a truth-telling session or hearing.

The committee commends the inclusion of provisions in the Bill requiring guidelines about procedures to be made about recognising whether a person is experiencing stress or psychological trauma through their involvement in the truth-telling process and procedures for supporting that person.

### **3.3.7 New offences**

The Bill provides for a range of offences, each of which has a maximum penalty of 100 penalty units (\$14,375<sup>214</sup>).

Under the Bill, it is an offence:

- for a member of the Treaty Institute Council<sup>215</sup> or a senior executive officer, to fail to immediately give notice of:
  - certain insolvency or disqualification matters<sup>216</sup>
  - a charge or conviction of an indictable offence<sup>217</sup>
- for a current or former Minister or member of the Treaty Institute Council or a senior executive officer or a staff member or a contractor of the Treaty Institute<sup>218</sup> or a public service employee performing functions relating to Treaty Institute, to disclose:
  - criminal history information, or use the information, other than as specified<sup>219</sup>
  - confidential information, or use the information, other than as specified<sup>220</sup>
- for a person given an attendance notice, to fail to attend the truth-telling hearing or continue to attend the hearing until excused from further attendance<sup>221</sup>

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<sup>213</sup> DSDSATSIP, correspondence, 24 March 2023, pp 6-7.

<sup>214</sup> The current value of a penalty unit \$143.75: Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, ss 5, 5A.

<sup>215</sup> The Bill would establish the Treaty Institute Council as the governing body of the Treaty Institute: Bill, cl 15.

<sup>216</sup> Unless the person has a reasonable excuse: Bill, cl 55.

<sup>217</sup> Unless the person has a reasonable excuse: Bill, cl 61.

<sup>218</sup> The Bill would establish the Treaty Institute: Bill, cl 9.

<sup>219</sup> Bill, cl 62.

<sup>220</sup> Bill, cl 63.

<sup>221</sup> Unless the person has a reasonable excuse: Bill, cl 86(1). The offence relating to a notice to attend only applies to the chief executive officers of government entities: Bill, cl 85. Section 276 of the *Public Sector Act 2002* provides the definition of 'government entity' for the Bill: Bill, sch 1. The model used for the Inquiry is intended to encourage voluntary participation by others: explanatory notes, p 4.

- for a person attending a truth-telling hearing, to fail to comply with each of the following requirements:
  - take an oath or make an affirmation<sup>222</sup>
  - answer the questions put to the person by a member of the Inquiry<sup>223</sup>
  - make an oral submission as required by the attendance notice<sup>224</sup>
- for a person who is or was the Minister or a member of the Inquiry or a public service employee performing functions under or relating to the administration of the Inquiry, to disclose or use confidential information, other than as specified<sup>225</sup>
- for a person to give information to the Inquiry that the person knows is false or misleading in a material particular.<sup>226</sup>

### 3.3.7.1 Fundamental legislative principles considerations

The proposed new offences raise an issue regarding the rights and liberties of individuals and whether the consequences of the Bill would be relevant and proportionate and consistent with penalties prescribed in other legislation.<sup>227</sup> The maximum penalties proposed in the Bill for the new offences are comparable with those contained other legislation.<sup>228</sup> Similar offences to those relating to the proposed requirement that a Treaty Institute Council member or senior executive must disclose a charge or conviction of an indictable offence during the person's term of appointment are included 'across the Queensland statute book'.<sup>229</sup>

#### **Committee comment**

The committee notes that the maximum penalties and requirements of the Treaty Institute Council members or senior executives set out in the proposed new offences in Bill are comparable with other Queensland legislation.

The committee acknowledges that, while comparable to other legislation, the maximum penalties for the proposed offences are fairly substantial monetary penalties (currently \$14,375). Nevertheless, the committee considers it likely that the success of the Treaty Institute, the Treaty Institute Council and the Inquiry will be dependent on stakeholders' confidence in the integrity of those in positions of responsibility and in the veracity of the information provided to the bodies, and that confidential information will be protected.

Accordingly, the committee is satisfied that the proposed new offences and the proposed penalties have sufficient regard to the rights and liberties of individuals.

<sup>222</sup> Bill, cl 86(2)(a).

<sup>223</sup> Unless the person has a reasonable excuse: Bill, cl 86(2)(b).

<sup>224</sup> Unless the person has a reasonable excuse: Bill, cl 86(2)(c).

<sup>225</sup> Bill, cl 91.

<sup>226</sup> Except in certain specified circumstances: Bill, cl 92.

<sup>227</sup> OQPC notebook, p 120. See also LSA, s 4(2)(a).

<sup>228</sup> *Meriba Omasker Kasiw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020; Public Guardian Act 2014; Health Ombudsman Act 2013 and Queensland University of Technology Act 1998.*

<sup>229</sup> Explanatory notes, p 7. See for example, *Hospital Foundations Act 2018* and *Jobs Queensland Act 2015*.

### 3.3.8 Protections

#### 3.3.8.1 *Protection from civil liability*

The Bill provides for protection from civil liability for particular acts or omissions for:

- a member of the Treaty Institute Council<sup>230</sup>
- a senior executive officer<sup>231</sup>
- a member of staff of the Treaty Institute<sup>232</sup>
- a member of the Inquiry.<sup>233</sup>

If a civil liability were prevented from attaching to one of these persons, the liability would attach instead to the state for a member of the Inquiry<sup>234</sup> or to the Treaty Institute for the other listed persons.<sup>235</sup> However, a person may still be subject to disciplinary action under the conditions of the person's appointment.<sup>236</sup> Although the Bill would prevent a person obtaining damages for harm from persons protected from civil liability, the person may instead be able to seek damages from the state or the Treaty Institute.<sup>237</sup>

The explanatory notes provide the following justification for the conferral of immunity:

- immunity from civil liability is appropriate if it is conferred on persons carrying out statutory functions, as is the case in this instance;
- the immunity is appropriately limited in scope, as it does not attach to acts done or omissions made which are reckless, unreasonable or excessive, but attaches only to acts done or omissions made honestly and without negligence; and
- liability for the consequences of actions done, or omissions made, is not extinguished by the Bill, but the liability attaches to the Treaty Institute for members of the Treaty Institute Council and the state for members of the Inquiry.<sup>238</sup>

The protection from civil liability in the Bill is similar to that provided in other Queensland legislation.<sup>239</sup>

#### 3.3.8.2 *Fundamental legislative principles considerations*

The LSA provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not confer immunity from proceeding or prosecution without adequate justification.<sup>240</sup>

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<sup>230</sup> Bill, cl 59(1).

<sup>231</sup> Bill, cl 59(2).

<sup>232</sup> Bill, cl 59(3).

<sup>233</sup> Bill, cl 89(1).

<sup>234</sup> Bill, cl 89(2).

<sup>235</sup> Bill, cl 59(2).

<sup>236</sup> Bill, cls 59(3) and 89(3).

<sup>237</sup> From the Treaty Institute (Bill, cl 59) or the state (Bill, cl 89).

<sup>238</sup> Explanatory notes, p 12.

<sup>239</sup> See for example, *Family and Child Commission Act 2014*, s 39; *Brisbane Olympic and Paralympic Games Arrangements Act 2021*, s 61; *Public Service Act 2008*, s 26C.

<sup>240</sup> LSA, s 77. See also, OQPC notebook, p 64.

The explanatory notes provide the following justification for the conferral of immunity:

- immunity from civil liability is appropriate if it is conferred on persons carrying out statutory functions, as is the case in this instance;
- the immunity is appropriately limited in scope, as it does not attach to acts done or omissions made which are reckless, unreasonable or excessive, but attaches only to acts done or omissions made honestly and without negligence; and
- liability for the consequences of actions done, or omissions made, is not extinguished by the Bill, but the liability attaches to the Treaty Institute for members of the Treaty Institute Council and the state for members of the Inquiry.<sup>241</sup>

The protection from civil liability in the Bill is similar to that provided in other Queensland legislation.<sup>242</sup>

#### **Committee comment**

The committee considers it appropriate that the protection is limited to acts done, or omissions made, honestly and without negligence under the relevant parts of the Bill. Further, the committee notes that the proposed protection from civil liability in the Bill is similar to that provided in other Queensland legislation.

The committee is satisfied that the provisions relating to protection from civil liability have sufficient regard to the rights and liberties of individuals.

#### **3.3.8.3 Protection of members and persons appearing before the Truth-telling and Healing Inquiry**

The Bill proposes the same protection and immunity as would apply in the Supreme Court be afforded to the following people appearing before the Inquiry:

- a member of the Inquiry when performing their functions at a truth-telling session or truth-telling hearing (same immunity and protection as a Supreme Court judge performing a judicial function)
- a lawyer or another person who appears for someone else at a truth-telling session or truth-telling hearing (same immunity and protection as a barrister appearing for a party in a proceeding in the Supreme Court)
- a person appearing at a truth-telling session or truth-telling hearing (same protection and immunity as a witness in a proceeding in the Supreme Court).<sup>243</sup>

#### **3.3.8.4 Fundamental legislative principles considerations**

As noted above, legislation should not confer immunity from proceeding or prosecution without adequate justification. Accordingly, the conferring of certain protections and immunities for members of the Inquiry and for lawyers or others appearing for someone else and persons appearing at a truth-telling session or truth-telling hearing raises an FLP issue as to whether the Bill has sufficient regard to the rights and liberties of individuals.

Similar protections to those in the Bill are provided in other Queensland legislation. The *Coal Mining Safety and Health Act 1999*, for example, provides similar protections for members of the board of inquiry, lawyers or other persons appearing before the inquiry for someone, and witnesses.<sup>244</sup> The

<sup>241</sup> Explanatory notes, p 12.

<sup>242</sup> See for example, *Family and Child Commission Act 2014*, s 39; *Brisbane Olympic and Paralympic Games Arrangements Act 2021*, s 61; *Public Service Act 2008*, s 26C.

<sup>243</sup> Bill, cl 77.

<sup>244</sup> See *Coal Mining Safety and Health Act 1999*, s 209.

*Health Ombudsman Act 2013* provides similar protections for inquiry members, lawyers or other persons appearing at a hearing for someone else, and witnesses.<sup>245</sup>

#### **Committee comment**

The committee notes the protections and immunities that would apply to members of the Truth-telling and Healing Inquiry and persons appearing before the Inquiry would be the same as those that apply in the Supreme Court.

The committee notes that those protections and immunities are provided to other bodies in Queensland legislation.

The committee is satisfied that the provisions relating to these protection and immunities have sufficient regard to the rights and liberties of individuals.

### **3.4 Role for other bodies in the Path to Treaty process**

Some submitters suggested bodies other than the Treaty Institute and the Inquiry needed to take an active role in the Path to Treaty process.

#### **3.4.1 Treaty Tribunal**

A number of submitters commented on the fact that the Bill does not include a Treaty Tribunal.<sup>246</sup>

The Eminent Panel, in its Advice and Recommendations from the Eminent Panel on Queensland's Path to Treaty, recommended that the proposed Path to Treaty Act will:

6.3.6 enable the future creation of a Treaty Tribunal to oversee the treaty making process, monitor compliance, arbitrate and resolve disputes and review treaties over time[.]<sup>247</sup>

The TAC report referenced the Eminent Panel's recommendation for the creation of a Treaty Tribunal and further stated:

This is a similar approach to treaty processes in other jurisdictions. For example, the Victorian Treaty process, proceeding under the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic), provides for establishment of a Treaty Authority- an 'umpire body' to oversee the treaty negotiation process and provide actions of dispute resolution in accordance with their agreed Treaty Negotiation Framework.

While the specifics of this body are yet to be decided, the Committee recognises that an arbitration mechanism, to provide more formal dispute resolution, is a necessary element in the treaty-making process, particularly when more informal processes of dispute resolution are not effective.<sup>248</sup>

One submitter suggested that, while this may have been held over until such time as treaties are negotiated, the Treaty Tribunal was 'very much needed' when the Institute Council is developing a treaty-making framework with the Queensland Government.<sup>249</sup>

The Queensland Law Society (QLS) stated:

... 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,

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<sup>245</sup> *Health Ombudsman Act 2013*, s 158.

<sup>246</sup> Submissions 5, 7, 32 and 38.

<sup>247</sup> Eminent Panel, *Advice and Recommendations from the Eminent Panel on Queensland's Path to Treaty*, February 2020, p 7.

<sup>248</sup> TAC report, p 19.

<sup>249</sup> FAIRA, submission 7, p 3.

including to First Nations lawyers, and interpreters to provide independent and culturally appropriate legal advice and services.<sup>250</sup>

The explanatory notes state that a Treaty Tribunal or similar mechanism to deal with disputes will be developed from 2024 as treaty negotiations begin.<sup>251</sup> The department, in the public briefing, stated:

The government certainly acknowledges the need for a body like that and certainly looking at experience interstate—for example Victoria. There will need to be a function of that nature. The bill focuses on the initial structures being the truth-telling inquiry and the institute, but we certainly acknowledge that there will be later amendments needed to this bill or new legislation depending on how that goes through to put in place a body that can (a) help be the facilitation for treaty negotiations between First Nations proponents and the government and (b) settle any disputes or issues that might arise. Whilst not in this bill, we acknowledge that that will be a subsequent piece of work. The work of the inquiry and its recommendations and the institute once it is up and running and their report to government will inform what that should look like. Then we will work on the legislation to support that.<sup>252</sup>

### **Committee comment**

The committee notes submitters' concerns that the Treaty Tribunal has not been included in the Bill.

The committee is satisfied that the Treaty Tribunal or a similar mechanism to deal with disputes will be developed in a future phase of the Path to Treaty process.

### **3.4.2 Local governments**

Submitters, including the Local Government Association of Queensland (LGAQ), and participants at public forums suggested that local governments need to be included in the Path to Treaty process.<sup>253</sup>

The LGAQ made the following recommendations in relation to the role of local governments in the Path to Treaty process:

- Conduct meaningful consultation with local governments, including First Nations councils, to ensure frameworks for treaty negotiations consider the potential impacts on their legislative and reporting requirements.
- Ensure meaningful consultation is conducted with local governments on the proposed strategies to engage with local Aboriginal and Torres Strait Islander People in empowering and supporting them through treaty negotiations where appropriate, noting that local governments are the closest level of government to local communities.
- Consider local government representation on Advisory Committees, as noted within the legislation.
- Noting that to date, there has been a lack of consultation and advice sought from local government and the sector's elected First Nations community leaders.
- Ensure that membership protocols for the Institute Council, Treaty Institute and Truth-telling and Healing Inquiry include appropriate frameworks that have the necessary rigour to effectively capture grassroots feedback from the community, reflecting the diversity across the regions.

<sup>250</sup> QLS, submission 32, p 5.

<sup>251</sup> Explanatory notes, p 2.

<sup>252</sup> Public briefing transcript, Brisbane, 13 March 2023, p 7.

<sup>253</sup> Submissions 5, 9 and 38; Ray Sambo, public forum transcript, Cairns, 20 March 2023, p 8; Josh Weazel, public forum transcript, Woorabinda, 24 March 2023, p 14. See also ITTB, submission 21 (supplementary submission), pp 3-4, in relation to the compulsion to produce documents.

- Timelines should be carefully considered and clearly communicated for the Bill so that considered and detailed feedback can be provided by local government and local communities.<sup>254</sup>

Cairns Regional Council recommended that:

That regions be supported to implement a process that is reflective of their unique characteristics. This includes flexibility in the extent, format, resourcing, and technical support needed to facilitate a process that ensures the perspectives of all stakeholders affected by the Bill are heard and accommodated.<sup>255</sup>

Cairns Regional Council also raised concerns about resource and capacity constraints facing local governments and that the Path to Treaty process ‘potentially represents a significant additional servicing and coordination commitment for Local Government’.<sup>256</sup> It further recommended that the LGAQ should be adequately resourced by the Queensland Government to ‘represent/advocate on behalf of the cross-cutting or shared issues affecting individual Councils’.<sup>257</sup>

The QHRC also commented that local governments need to be ‘appropriately resourced to participate fully in this process’.<sup>258</sup>

One submitter suggested that the treaty and truth-telling should be implemented at the local government level.<sup>259</sup> The Mayor of Woorabinda stated, in the context of the federal Voice proposal, ‘they need to resource the tier of government that is closest to the people and that is local government’.<sup>260</sup>

In its response to submissions, the department stated:

The department acknowledges the role of local governments in truth-telling, healing and treaty processes and that these are important considerations for the implementation phase.

The Government Treaty Readiness Committee (that includes representation from the Department of State Development, Infrastructure, Local Government and Planning) and the Ministerial Consultative Committee are considering implementation matters including the support required in relation to truth telling, healing and treaty making.

The approach will also be informed by the Interim Truth and Treaty Body community engagement including in relation to proposals for implementation arrangements for the Truth-Telling and Healing Inquiry and the First Nations Treaty Institute.<sup>261</sup>

In relation to the LGAQ’s recommendation that the Treaty Institute Council should have local government representation on advisory committees, the department stated that cl 33 is a broad provision that allows the Treaty Institute Council to have broad powers to determine whether there is a need for an advisory committee to assist in matters related to treaty and local government.<sup>262</sup>

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<sup>254</sup> Submission 9, p 1.

<sup>255</sup> Submission 5, p 1.

<sup>256</sup> Submission 5, p 2.

<sup>257</sup> Submission 5, p 2.

<sup>258</sup> Public hearing transcript, Brisbane, 27 March 2023, p 9.

<sup>259</sup> Name withheld, submission 38, p 1.

<sup>260</sup> Public forum transcript, Woorabinda, 24 March 2023, p 14.

<sup>261</sup> DSDSATSIP, correspondence, 24 March 2023, p 3.

<sup>262</sup> DSDSATSIP, correspondence, 24 March 2023, p 6.



**Committee comment**

The committee agrees with submitters that local governments will play a significant role in the Path to Treaty process.

The committee encourages the responsible Minister to consider the role and resourcing of local governments in the implementation of the Path to Treaty process.

**3.4.3 Native Title Prescribed Bodies Corporate and Native Title Representative Bodies**

A number of submissions and participants at public forums questioned the role Native Title bodies will play in the Path to Treaty process.<sup>263</sup>

The GBK Torres Strait Sea and Land Council stated '[w]e expect, in good faith, that the Treaty Institute will be sufficiently independent from government interests and prioritise engagement with Native Title entities to carry out its functions effectively and efficiently.'<sup>264</sup>

One submitter suggested that if an Indigenous group has been granted Native Title, then that is the group that should enter into a treaty.<sup>265</sup> In contrast, another submitter stated:

... the State cannot fall back on using the outcomes from such a unjust, divisive and discriminatory form of legislation 'The Native Title Act 1993' as a means of determining who a 'Treaty' shall be made with or the areas which the 'Treaty' shall be contained with.<sup>266</sup>

Some submitters also raised the issue of groups which:

- have not made Native Title claims
- have not been successful in making Native Title claims
- have had determinations that their Native Title has been extinguished
- are unable to make Native Title claims as they have been removed from their traditional lands.<sup>267</sup>

Mr Gooda from the ITTB gave the following example:

[we] went up to a place on the Atherton Tablelands, Woodleigh Station, and we met this group up in North Queensland. They have nine groups come together and some have Native Title and some do not, but they said that they might need resources to work out what governance they use for those nine groups so that every one of the people in those nine groups can have a say. The treaty institute might say, 'Okay, we'll have an arrangement with you guys to work that out.'<sup>268</sup>

<sup>263</sup> Submissions 7, 8, 19, 37 and 38; Roderick Bourke, public forum transcript, Cairns, 20 March 2023, p 2; Phil Rist, public forum transcript, Cairns, 20 March 2023, p 5; Dr Tia Whyman, public forum transcript, Longreach, 23 March 2023, p 7.

<sup>264</sup> GBK Torres Strait Sea and Land Council, submission 19, p 3.

<sup>265</sup> Name withheld, submission 38, p 1.

<sup>266</sup> Travis Harbour, submission 37, p 4.

<sup>267</sup> Name withheld, submission 38, p 1; Dan Carter, public forum transcript, Longreach, 23 March 2023, p 8; Barbara Hatfield, public forum transcript, Rockhampton, 24 March 2023, p 20.

<sup>268</sup> Public forum transcript, Woorabinda, 24 March 2023, p 10.

### **Committee comment**

The committee notes the issues raised by submitters and participants at public forums in relation to the role of Native Title bodies.

The committee recognises the importance of self-determination to Aboriginal and Torres Strait Islander peoples. As such, the committee is of the view that the role of Native Title bodies in the Path to Treaty process is a matter for Aboriginal and Torres Strait Islander peoples to determine.

#### **3.4.4 Land Councils**

One submitter, FAIRA, recommended that the Queensland Government should establish 4 statutory Aboriginal land councils and one Torres Strait Islander land council, elected by First Nations people within their regions.<sup>269</sup> Two members of each land council should be nominated as members of the Treaty Institute Council.<sup>270</sup> FAIRA stated that this would encourage '[s]trong governance arrangements with accountability and reporting to the Land Councils and, through them, their communities'.<sup>271</sup>

They further explained that:

In our mind and experience in other parts of Australia, land councils are representative structures which typify the interests of Aboriginal and Torres Strait Islander peoples. That has been demonstrated. It should have happened in Queensland under land rights legislation which did not properly eventuate in 1991. These are structures where the people determine the make-up, composition and representation. They also have a political purpose. We have every right to have political objectives and political development.<sup>272</sup>

Land councils have been established in New South Wales, South Australia and the Northern Territory.<sup>273</sup>

The QLS also noted the New South Wales land council as having 'a good democratic process whereby regional areas vote their members in'.<sup>274</sup>

The department, in its response to submissions, stated that this was 'out of scope for the Bill'.<sup>275</sup>

### **Committee comment**

The committee notes submitters' recommendations to establish statutory land councils, modelled on those in New South Wales, South Australia and the Northern Territory to act as representative bodies.

The Committee recognises the decentralized and expansive geography of Queensland, including the many traditional owner groups and the mass displacement of peoples during the 235 years of colonisation and the challenges this creates for ensuring First Nations people's voices are heard in the Path to Treaty process.

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<sup>269</sup> Submission 7, p 3.

<sup>270</sup> Submission 7, p 6. See also public hearing transcript, Brisbane, 27 March 2023, p 16.

<sup>271</sup> Submission 7, p 2.

<sup>272</sup> Public hearing transcript, Brisbane, 27 March 2023, p 14.

<sup>273</sup> FAIRA, public hearing transcript, Brisbane, 27 March 2023, p 16. See also *Aboriginal Land Rights Act 1983* (NSW); *Aboriginal Land Trust Act 2013* (SA), *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* (SA) and *Maralinga Tjarutja Land Rights Act 1984* (SA); *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

<sup>274</sup> Public hearing transcript, Brisbane, 27 March 2023, p 11.

<sup>275</sup> DSDSATSIP, correspondence, 24 March 2023, p 5.

### Recommendation 16

The committee recognises the decentralised and expansive geography of Queensland, including traditional owner groups and the mass displacement of peoples during the 235 years of colonisation, and recommends that the Treaty Institute be organised according to representative geographical regions.

## 3.5 Other recommendations

Submitters made a number of other recommendations in relation to the Bill.

### 3.5.1 Public awareness campaign

A number of submitters raised the importance of communication, education and public awareness about the treaty processes and procedures that the Bill would establish.

*It is vital that ratepayers and the broader community have access to clear and objective information about the legislation and the treaty and truth-telling processes and the potential obligations and requirements of Local Government in these processes.*

*This information will help to create a more informed community narrative and foster community receptiveness to participation. This approach will also assist in mitigating unforeseen adverse effects, such as a decline in community cohesion. A clear and concise public awareness campaign will help to build community appetite for treaty and to maintain clarity should concurrent processes occur, such as the national referendum to recognise Aboriginal and Torres Strait Islander peoples in the Constitution.*

Cairns Regional Council, submission 5, p 3.

Submitters recommended:

- delivering a broad and far-reaching public awareness campaign to provide the general population with clear information about the legislation, including defined responsibilities for both the state government and local governments, to assist in managing community expectations and concerns relating to the treaty, treaty negotiations and truth-telling processes<sup>276</sup>
- establishing a regional coordination mechanism to provide advice and carry out tailored engagement to ensure the full spectrum of First Nations people's perspectives are captured, accounting for those most often marginalised from such processes<sup>277</sup>
- underpinning the Treaty Institute and Inquiry with 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 so that the consultation processes and the bodies that would be established by the Bill are culturally safe and accessible in all respects<sup>278</sup>
- increasing education funding and resources for education of the wider population to allow for an accurate understanding of the importance of a treaty and what this means for people

<sup>276</sup> Cairns Regional Council, submission 5, p 3.

<sup>277</sup> Cairns Regional Council, submission 5, p 3.

<sup>278</sup> ANTAR, Australian Lawyers Alliance, ANTAR Qld, submission 31, p 6.

residing in Queensland and how a treaty between the Aboriginal and Torres Strait Islander peoples and the Queensland Government is critical for reconciliation.<sup>279</sup>

#### **Committee comment**

The committee agrees with submitters that broad public awareness and communication about the treaty bodies' work, program and procedures is vital to the success of the treaty process.

#### **Recommendation 17**

The committee recommends that the Queensland Government conduct a broad and far-reaching public awareness and public information campaign about the importance of treaty, the roles of the Truth-telling and Healing Inquiry and the First Nations Treaty Institute, and how the community can engage with the treaty process.

### **3.5.2 Obligation on the state to negotiate in good faith**

A number of submitters suggested that there should be an obligation on the state to negotiate in good faith.<sup>280</sup>

The Castan Centre for Human Rights Law recommended:

The State's conduct must fully reflect the treaty and truth as a process 'in partnership and good faith', cognisant of the history of Queensland's colonisation and the litany of failed reconciliation plans and independent inquiries that the State of Queensland and the Commonwealth has served up for First Nations people. The State must match words with actions more broadly in its conduct with First Nations people in, through, and beyond the path to treaty.<sup>281</sup>

This reflects Article 19 of the UNDRIP:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

The Castan Centre for Human Rights Law further stated that '[w]ithout adherence to the rights recognised in the UNDRIP, any pathway to treaty and truth risks imposing top-down benevolent reforms on First Nations people and failing to properly engage First Nations people to secure their free, prior, and informed consent and achieve their self-determination.'<sup>282</sup>

#### **Committee comment**

The committee agrees with submitters that it is essential that the state negotiates in good faith.

The Committee is of the view that the principles of administering the Act, as set out in clause 6 of the Bill, specifically include a reference to 'good faith' which will guide the Queensland Government in its Path to Treaty process.

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<sup>279</sup> Queensland Aboriginal and Islander Health Council, submission 33, Recommendation 4.

<sup>280</sup> Submissions 4, 7 and 31.

<sup>281</sup> Submission 4, p 1.

<sup>282</sup> Submission 4, p 3. See also Alberto Nicotra, submission 39, p 1.

### 3.5.3 Review after 12 months

The QHRC recommended that there be a review 12 months after the commencement of the Inquiry in relation to the mechanisms and powers of the Inquiry.<sup>283</sup>

As noted in 3.3.5 above, the ITTB supported this recommendation in their supplementary submission.<sup>284</sup>

#### **Committee comment**

The committee supports the recommendation from the QHRC and ITTB for a review 12 months after the commencement of the Inquiry in relation to the mechanisms and powers of the Inquiry.

Refer to Recommendation 15, section 3.3.5 above (page 39).

### 3.5.4 Quorum on the Inquiry

Clause 73(2) of the Bill proposes that in conducting a truth-telling hearing the Inquiry must be constituted by all the members of the Inquiry.

The QHRC stated:

We respectfully suggest that such a rigid requirement is impractical and will unduly constrain the inquiry in performing its functions efficiently. I note in this respect my understanding that the Yoorrook commissioners have divided up many of their hearings between commissioners, operating with a quorum of two members.<sup>285</sup>

#### **Committee comment**

The committee notes the concerns in relation to the requirement for all members of the Inquiry to be present in conducting truth-telling hearings.

The committee is of the view that this is a matter that could be considered by the Minister in the review of the mechanisms and powers of the Inquiry 12 months after the commencement of the Inquiry.

### 3.5.5 Oversight

The committee noted that the Bill proposed that the Treaty Institute be established as a statutory body but that there was no provision in the Bill for parliamentary oversight. In response, the department stated:

There is not specifically in the bill but it is subject to the same sorts of arrangements as other statutory bodies. We would be happy to take advice from the committee on what sort of arrangements should be in place that fit in with the standard protocols for parliamentary committees. That might be an area we would look for advice on from the committee. Obviously the balancing act here is that the institute is an independent statutory body and the independence of this work is particularly critical, hence the council being in place to provide that sort of oversight of the institute's function. At this stage, no, we have not specifically put that in place.<sup>286</sup>

#### **Committee comment**

The committee is of the view that the Treaty Institute, as a statutory body, should be subject to parliamentary oversight.

<sup>283</sup> Submission 6, pp 3 and 9. See also QHRC, public hearing transcript, Brisbane, 27 March 2023, p 7.

<sup>284</sup> ITTB, submission 21 (supplementary submission), p 5.

<sup>285</sup> Public hearing transcript, Brisbane, 27 March 2023, p 7.

<sup>286</sup> Public briefing hearing, Brisbane, 13 March 2023, p 4.

**Recommendation 18**

The committee recommends the responsible Minister considers amending the Path to Treaty Bill to include a parliamentary oversight provision.

## 4 Funding

The Bill does not provide for funding of the treaty process.

The explanatory notes state:

- A \$300 million Path to Treaty Fund (Fund) was included in the 15 June 2021 Queensland Budget to provide financial security for the treaty process.<sup>287</sup>
- A minimum annual allocation of \$10 million from the Fund ‘will be made available to support the Institute to maintain the Path to Treaty process for the duration of treaty-making’.<sup>288</sup>
- Allocations from the Fund would be ‘available to commence key functions of the Path to Treaty, including local truth-telling and healing activities, community engagement and research and advisory functions’.<sup>289</sup>

Regarding the Fund, submitters:

- supported its establishment<sup>290</sup>
- asserted the Treaty Institute should have oversight and control over the Fund<sup>291</sup>
- sought a review of the Fund to determine its quantum and any top up funding required to ensure its ‘sustainability as a source of residual funding for the Institute and the development of the Treaty Framework and future negotiations’<sup>292</sup>
- recommended the development of processes for the transfer of funds from the Fund be overseen by the Treasurer ‘as a matter of urgency’, and that ‘an independent dispute resolution process to mediate any concerns around these matters be established in the event of the agreed process being compromised by either party’.<sup>293</sup>

Regarding funding for the Treaty Institute, submitters:

- recommended that the full annual returns from the Fund investments be made available for the administration of the Treaty Institute operations and carrying out its legislated functions<sup>294</sup>
- suggested amendment of the Bill ‘to provide guaranteed government funding of the Treaty Institute to enable it to carry out its work’ that was ‘guaranteed independently of executive discretion’<sup>295</sup>
- questioned whether ‘a \$10 million allocation to establish and operate this Institute’, as listed in the explanatory notes, was ‘adequate to address an extremely complex social and legal issue for which it holds responsibility, and to capture the future benefits of reconciliation?’<sup>296</sup>

<sup>287</sup> Explanatory notes, p 2.

<sup>288</sup> Explanatory notes, p 5.

<sup>289</sup> Explanatory notes, p 5.

<sup>290</sup> QLS, submission 32, p 4.

<sup>291</sup> ANTAR (National), Australian Lawyers Alliance, ANTAR QLD, submission 31, p 11.

<sup>292</sup> ANTAR (National), Australian Lawyers Alliance, ANTAR QLD, submission 31, p 11.

<sup>293</sup> ITTB, submission 21, p 18.

<sup>294</sup> ITTB, submission 21, p 17.

<sup>295</sup> Castan Centre for Human Rights Law, submission 4, pp 1 and 5. See also FAIRA, public hearing transcript, Brisbane, 27 March 2023, p 16.

<sup>296</sup> QNMU, submission 16, p 7.

- sought additional up-front funding for the establishment/set up costs of the Treaty Institute<sup>297</sup>
- recommended appropriations from the Fund should be administered by the Institute Council, suggesting that ‘Any alternative where the government holds the purse strings compromises the independence of the Treaty Institute’<sup>298</sup>
- asserted that the allocation of funds to the Treaty Institute are ‘inadequate and limited’<sup>299</sup>
- called for clarity as to whether the time, knowledge and perspectives of First Nations community members contributing to the treaty process, currently provided ‘at great personal and financial cost ... for little or no compensation’, fall within the meaning of “key functions of the Path to Treaty” for which the Treaty Institute would be funded<sup>300</sup>
- stated ‘the \$10 million is simply a floor and not a ceiling in terms of what might be available and certainly is not a statement of what is actually required’.<sup>301</sup>

With respect to funding for the Inquiry, submitters:

- sought amendment of the Bill to ensure guaranteed government funding of the Inquiry, independent of executive discretion and be managed by that inquiry<sup>302</sup>
- asserted ‘the budget of the Inquiry must be adequate to facilitate a thorough consultation and community engagement process’<sup>303</sup>
- urged adequate funding ‘for a much longer time frame’ than the outlined 3 years for the Inquiry, stating ‘Having waited 164 years it would seem reasonable to wait for a period longer than 3 years to get this right’<sup>304</sup>
- expressed concern that the resources allocated to that inquiry would ‘divert funds away from the preparation work that Torres Strait polities and Aboriginal polities need to do to become Treaty-ready’<sup>305</sup>
- recommended ‘adequately funded independent advocacy services for individuals wishing to participate in truth telling’, stating that ‘[a]dvocacy is essential for some participants, especially those who are vulnerable, to have a voice in the process’ and ‘[t]he government should not seek to rely on the existing resources of First Nations non-government agencies or the many unpaid volunteers working for their communities’<sup>306</sup>

As to treaty resources for First Nations communities, submitters:

- recommended consideration 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<sup>307</sup>

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<sup>297</sup> ANTAR (National), Australian Lawyers Alliance, ANTAR QLD, submission 31, p 10.

<sup>298</sup> FAIRA, submission 7, p 3.

<sup>299</sup> QLS, submission 32, p 5.

<sup>300</sup> QLS, submission 32, p 5.

<sup>301</sup> ITTB, public hearing transcript, Brisbane, 13 March 2023, p 5.

<sup>302</sup> Castan Centre for Human Rights Law, submission 4, p 7.

<sup>303</sup> ANTAR (National), Australian Lawyers Alliance, ANTAR QLD, submission 31, p 13.

<sup>304</sup> IMAN Wardingarri Aboriginal Corporation, submission 28, p 4.

<sup>305</sup> GBK Torres Strait Sea and Land Council, submission 19, p 4.

<sup>306</sup> QHRC, submission 6, p 7.

<sup>307</sup> ANTAR (National), Australian Lawyers Alliance, ANTAR QLD, submission 31, p 11.



- called for ‘a further bucket of funding’ to be ‘explicit in the Bill’ for a ‘thorough consultation process that goes to supporting the engagement of First Nations communities across the State’, noting the size of Queensland and its decentralised population base<sup>308</sup>
- called for the Bill to include establishment of a ‘Future Fund to support First Nations self-government after a Treaty has been negotiated [as] recommended by the Treaty Working Group’<sup>309</sup>
- called for funding ‘for organisations to work on our terms – not yours – because you have done a bad job’.<sup>310</sup>

In response to funding issues raised in submissions, the department stated the issue was out of scope for the Bill.<sup>311</sup>

### **Committee comment**

While funding of Path to Treaty processes is outside the scope of the Path to Treaty Bill, the committee notes submitters’ views and recognises that the management of the Path to Treaty Fund is the responsibility of the Queensland Government.

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<sup>308</sup> ANTAR (National), Australian Lawyers Alliance, ANTAR QLD, submission 31, p 10.

<sup>309</sup> FAIRA, submission 7, p 2. See also FAIRA, public hearing transcript, Brisbane, 27 March 2023, p 16.

<sup>310</sup> Mr Jaburu, public forum transcript, Cairns, 20 March 2023, p 19.

<sup>311</sup> DSDSATSIP, correspondence, 24 March 2023, p 2.

## Appendix A – Treaty developments in other jurisdictions

### 1 Australia

No First Nations Treaty has yet been finalised under a treaty process in any Australian state or territory.

#### 1.1 Victoria

In August 2018, the Victorian Parliament passed the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic) (Victorian Treaty Act).

The Victorian Treaty Act established:

- the Aboriginal Representative Body
- the guiding principles for the treaty process
- the Treaty Authority
- the treaty negotiation framework
- the self-determination fund.<sup>312</sup>

In December 2019, the First Peoples' Assembly of Victoria was declared to be the Aboriginal Representative Body:<sup>313</sup>

- there are 31 members with:
  - 21 general seats, with members chosen by a state-wide election
  - 11 reserved seats representing each formally recognised Traditional Owner group in Victoria
- more reserved seats can be added by the First Peoples' Assembly for Traditional Owner groups not formally recognised under legislation:
  - there is a currently an application for a reserved seat by the Wamba Wamba Peoples in the north west of Victoria.

In August 2020, the first official negotiating meeting between the Victorian Government and the First Peoples' Assembly of Victoria was held.<sup>314</sup>

In February 2021, a dispute resolution process for resolving disputes arising in relation to the Treaty elements was finalised as required under the Victorian Treaty Act.<sup>315</sup>

In April 2021, the Treaty conduct protocols came into effect following the First Peoples' Assembly of Victoria's approval.<sup>316</sup>

In May 2021, the Yoorrook Justice Commission was established to implement the truth-telling process.<sup>317</sup>

In June 2022, the Treaty Authority, required under the Victorian Treaty Act, was agreed upon.<sup>318</sup>

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<sup>312</sup> Explanatory notes, *Advancing the Treaty Process with Aboriginal Victorians Bill 2018*, p 1.

<sup>313</sup> First Peoples-State Relations, *Pathway to Treaty*, 20 October 2022.

<sup>314</sup> First Peoples-State Relations, *Pathway to Treaty*, 20 October 2022.

<sup>315</sup> First Peoples-State Relations, *Pathway to Treaty*, 20 October 2022.

<sup>316</sup> First Peoples-State Relations, *Pathway to Treaty*, 20 October 2022.

<sup>317</sup> First Peoples-State Relations, *Pathway to Treaty*, 20 October 2022.

<sup>318</sup> First Peoples-State Relations, *Pathway to Treaty*, 20 October 2022.

In August 2022, the Victorian Parliament passed the *Treaty Authority and Other Treaty Elements Act 2022* (Vic).

In October 2022, the Treaty Negotiation Framework was agreed between the state and the First Peoples' Assembly of Victoria.

In October 2022, the Self-Determination Fund was agreed between the state and the First Peoples' Assembly of Victoria.<sup>319</sup>

The Self-Determination Fund will have 2 purposes:

- to support First Peoples to negotiate Treaties on a more level playing field with the State, recognising the imbalance of financial resources and power between First Peoples and government. This will help ensure that First Peoples have the resources needed to prepare for and engage in Treaty negotiations
- to empower First Peoples to build capacity, wealth, and prosperity for current and future generations.

Treaty negotiations are set to commence in 2023.<sup>320</sup>

## 1.2 Northern Territory

On 8 June 2018, the Northern Territory Government signed the Barunga Agreement:

- a Memorandum of Understanding between the Northern Territory Government and the 4 Aboriginal Land Councils
- the Northern Territory Government pledged \$4.2 million over 3 years to fund a Northern Territory Treaty Commission to consult and report about a possible treaty-making framework in the Northern Territory.<sup>321</sup>

In March 2019, the Northern Territory Treaty Commission was established.<sup>322</sup>

The Northern Territory Treaty Commission delivered the following:

- an Interim Report in March 2020
- a Discussion Paper in June 2020
- a Final Report on 29 June 2022.

On 29 December 2022, the Northern Territory Government provided its response to the Final Report:

- there is no consensus view, even among Aboriginal Territorians and organisations, on what treaty framework is right for the Territory
- a series of First Nations Forums will be developed in conjunction with the 4 Aboriginal Land Councils and run over the next 18 months to 2 years
- the treaty pathway will be underpinned by truth-telling

<sup>319</sup> First Peoples-State Relations, *Pathway to Treaty*, 20 October 2022.

<sup>320</sup> First Peoples – State Relations, *Treaty Authority establishment*, 28 October 2022; First Peoples – State Relations, *Establishment of the Treaty Negotiation Framework and Self-Determination Fund*, 31 October 2022.

<sup>321</sup> Office of Aboriginal Affairs, *Treaty*, n.d., accessed on 17 February 2023.

<sup>322</sup> Northern Territory Treaty Commission, *Home*, n.d., accessed on 17 February 2023.

- the Treaty Unit within the Office of Aboriginal Affairs is responsible for developing and implementing treaty-related legislation and policy and engaging with the Commonwealth around Voice developments and funding for the treaty process.<sup>323</sup>

### 1.3 Australian Capital Territory

In 2008, the Australian Capital Territory (ACT) Aboriginal and Torres Strait Islander Elected Body (ATSIEB) was established under the *Aboriginal and Torres Strait Islander Elected Body Act 2008* (ACT):

- the ATSIEB consists of 7 people representing the interests and aspirations of the local Aboriginal and Torres Strait Islander community
- it provides direct advice to the ACT Government.<sup>324</sup>

In 2019, the ACT Government and the ATSIEB entered into the ACT Aboriginal and Torres Strait Islander Agreement 2019 – 2028 (Agreement):

- The Action Plan under the Agreement, Core Focus Area – Cultural Integrity, includes working with traditional owners to hear their thoughts on Treaty and support a joint understanding of the opportunity for and implications of a Treaty process for the ACT.

In July 2022, Professor Kerry Arabena published the *Implementation Pathways to Achieve Ngunnawal, First Nations Peoples and Australian Capital Territory Government Treaties* report.<sup>325</sup>

In July 2022, the ACT Government Minister, Rachel Stephen-Smith MLA released a media statement:

I recognise that the report's content and assertions will cause distress for some community members, particularly those Traditional Owner individuals and families who were not consulted or engaged in this early process.

On behalf of the ACT Government, I acknowledge that, for various reasons, this process did not engage as broadly as we had intended, and I apologise for the hurt that this has caused.

I note that the report also recognises the vocal opposition from those not engaged in the process about the validity of this work.

Over the last few weeks, I have had conversations with a range of community members, including Traditional Owners, who have expressed concern that the ACT Government was rushing into a Treaty process without facilitating the healing and deep conversations that will be required.

I want to assure all ACT Traditional Owner families and the wider Aboriginal and Torres Strait Islander community that the Government has made no decisions or commitments to any individual or family group about what Treaty will look like or how we will get there.

We understand that everyone who potentially has a stake in Treaty must be engaged in the process and that this process will take time. We do not have a fixed timeline and we know that processes in other jurisdictions have taken many years.

I have also heard from some individuals and families that they do not believe Treaty is the right path forward for the ACT. These voices must have the opportunity to be heard.

The Government is also aware of the significant pain and conflict within the local Aboriginal and Torres Strait Islander community resulting from trauma and lateral violence.

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<sup>323</sup> Office of Aboriginal Affairs, *NT Government response to NT Treaty Commission's Final Report*, n.d., accessed on 23 February 2023.

<sup>324</sup> 'Welcome to the ACT Aboriginal and Torres Strait Islander Elected Body (ATSIEB)', *ATSIEB*, n.d., accessed on 24 February 2023.

<sup>325</sup> Australian Capital Territory, *Implementation Pathways to Achieve Ngunnawal, First Nations Peoples and Australian Capital Territory Government Treaties* [https://www.communityservices.act.gov.au/\\_\\_data/assets/pdf\\_file/0018/2031543/Karabena\\_Consulting\\_Report.pdf](https://www.communityservices.act.gov.au/__data/assets/pdf_file/0018/2031543/Karabena_Consulting_Report.pdf), 7 July 2022.

We are actively considering how – through the Healing and Reconciliation Fund – we can facilitate a productive and healing conversation with Traditional Owners and the wider Aboriginal and Torres Strait Islander community to help address these very challenging issues.

We recognise that whatever comes next will require sustained effort, resourcing and expertise.<sup>326</sup>

#### 1.4 South Australia

In 2017, the South Australian Government commenced a treaty making process:

- the South Australian Treaty Commissioner was appointed
- in 2018, the Buthera Agreement was signed with the Narungga Nation Aboriginal Corporation, which committed:<sup>327</sup>
  - government agencies to support for economic development and social services on Guuranda (Yorke Peninsula)
  - both parties to negotiate for Treaty over the following 3 years.<sup>328</sup>

In March 2018, a Liberal government was elected and ceased the treaty process.<sup>329</sup>

In March 2022, a Labor government was elected and recommitted to the treaty process.<sup>330</sup>

#### 1.5 Tasmania

In December 2022, the Tasmanian government committed to progressing Truth-telling and Treaty with Tasmanian Aboriginal people.<sup>331</sup>

A First Nations Advisory group to design a process for Truth-telling and Treaty was scheduled to meet for the first time in early 2023.<sup>332</sup>

#### 1.6 New South Wales and Western Australia

These states do not appear to be engaged in a treaty process.

<sup>326</sup> R Stephen-Smith, 'Statement: Receipt of Karabena Consulting Report - Implementation Pathways to achieve Ngunnawal, First Nations Peoples and Australian Capital Territory Government Treaties', media statement, 7 July 2022.

<sup>327</sup> South Australia, Premier of South Australia, 'Government thanks outgoing Aboriginal Engagement Commissioner', media release, 5 January 2023.

<sup>328</sup> South Australia, Attorney-General's Department, *Buthera Agreement*, n.d., accessed on 23 February 2023; L Kingston, 'SA Government Signs Buthera Agreement With Narungga Nation', media release, 17 February 2018.

<sup>329</sup> C Lawrence, & T Birch, 'Treaty update: Progress in State based Treaty negotiations and proposals for a national Indigenous Voice', *Ashurst*, 1 April 2021; A Green, 'Final results of the 2018 South Australian Election', *ABC News*, 4 April 2018.

<sup>330</sup> D Smith, 'What SA's new govt wants to achieve in Aboriginal affairs', *NITV*, 23 March 2022.

<sup>331</sup> R Jaensch, Minister for Aboriginal Affairs, 'Advisory group to guide process for Truth-telling and Treaty', media release, 2 December 2022.

<sup>332</sup> R Jaensch, Minister for Aboriginal Affairs, 'Advisory group to guide process for Truth-telling and Treaty', media release, 2 December 2022.

## 2 New Zealand - Aotearoa

On 6 February 1840, the Treaty of Waitangi – Te Tiriti (Treaty) was first signed by the British Crown and approximately 540 Māori chiefs.<sup>333</sup>

The Treaty is a broad statement of principles on which the British and Māori made a political compact to found a nation state and build a government in New Zealand with 3 articles:

- Māori cede the sovereignty of New Zealand to Britain
- Māori give the Crown an exclusive right to buy lands they wish to sell, and, in return, are guaranteed full rights of ownership of their lands, forests, fisheries and other possessions
- Māori are given the rights and privileges of British subjects.<sup>334</sup>

A Māori and an English version of the Treaty of Waitangi were signed. The Māori version is not an exact translation of the English text. The most significant differences are:<sup>335</sup>

- in the Māori text of article 1, Māori gave the British 'kawanatanga', the right of governance, whereas in the English text, Māori ceded 'sovereignty'
- the English version guaranteed 'undisturbed possession' of all their 'properties', but the Māori version guaranteed 'tino rangatiratanga' (full authority) over 'taonga' (treasures, which may be intangible).<sup>336</sup>

In 1975, the New Zealand Parliament passed the *Treaty of Waitangi Act 1975* (NZ) (the Act):

- the Treaty is included as Schedule 1 of the Act

The Waitangi Tribunal was established under the Act:

- claims to the Waitangi Tribunal are allegations that the Crown has breached the Treaty and that Māori have suffered prejudice as a result
- the Waitangi Tribunal releases findings including recommendations to the government:
  - reports have covered a wide range of issues including fresh water, underground resources and fisheries
  - reports are available online
  - the government and the claimant then negotiate a settlement.<sup>337</sup>

The Office for Māori Crown Relations – Te Arawhiti deals with historical claims, that is, breaches of the Treaty before 1992:

- historical settlements aim to resolve claims and provide some redress to claimant groups
- settlement may include 3 kinds of redress:
  - an historical account of the Treaty breaches, and Crown acknowledgement and apology
  - cultural redress including things like changing place names, the transfer of Crown Land to the claimant group and co-governance of lakes and rivers

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<sup>333</sup> Ministry for Culture and Heritage, 'The Treaty in brief', *New Zealand History*, 17 May 2017.

<sup>334</sup> Ministry for Culture and Heritage, 'The Treaty in brief', *New Zealand History*, 17 May 2017.

<sup>335</sup> Ministry for Culture and Heritage, 'The Treaty in brief', *New Zealand History*, 17 May 2017; Waitangi Tribunal, *Meaning of the Treaty*, 19 September 2016.

<sup>336</sup> Ministry for Culture and Heritage, 'The Treaty in brief', *New Zealand History*, 17 May 2017; Waitangi Tribunal, *Meaning of the Treaty*, 19 September 2016.

<sup>337</sup> Waitangi Tribunal, *What is a claim?*, 19 September 2016.

- commercial and financial redress including cash, property or a mix of both.<sup>338</sup>

Over time the Waitangi Tribunal, the Government and New Zealand courts have developed principles to define the meaning and application of the Treaty in contemporary New Zealand. Key principles are: reciprocity, active protection, partnership, equity, and equal treatment.<sup>339</sup>

### 3 Canada

The Canadian Constitution recognises 3 groups of Indigenous or Aboriginal peoples (that is, the original people of North America and their descendants):

- Indians (more commonly referred to as First Nations)
- Inuit
- Métis.<sup>340</sup>

Treaties with Indigenous peoples in Canada include both:

- historic treaties with First Nations:
  - the Government of Canada recognises 70 historic treaties in Canada signed between 1701 and 1923
- modern treaties (also called comprehensive land claim agreements) with Indigenous groups:
  - since 1975, Canada has signed 25 treaties with Indigenous groups, some of which include self-government.<sup>341</sup>

Modern treaties negotiated with Indigenous groups (after 1975) may include (among other things):

- consultation and participation requirements
- ownership of lands
- wildlife harvesting rights
- financial settlements
- participation in land use and management in specific areas
- self-government
- resource revenue sharing and measures to participate in the Canadian economy
- preparations for when the agreement takes effect (such as implementation planning).<sup>342</sup>

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<sup>338</sup> New Zealand Government, *Settling historical Treaty of Waitangi claims*, n.d., accessed on 24 February 2023.

<sup>339</sup> Waitangi Tribunal, *Treaty Principles and Standards*, <https://waitangitribunal.govt.nz/publications-and-resources/waitangi-tribunal-reports>

<sup>340</sup> Government of Canada, *Indigenous Peoples and communities*, 30 August 2022.

<sup>341</sup> Government of Canada, *Treaties and Agreements*, 30 July 2020.

<sup>342</sup> Government of Canada, *Treaties and Agreements*, 30 July 2020.

## Appendix B – Submitters

Submission No.	Submitter
001	Trevor Murphy
002	Queensland Art Gallery, Gallery of Modern Art
003	Robert Heron
004	Castan Centre for Human Rights Law
005	Cairns Regional Council
006	Queensland Human Rights Commission
007	FAIRA
008	Ross Daniels
009	Local Government Association of Queensland (LGAQ)
010	Sharon Smith
011	Queensland Family & Child Commission and Supplementary Submission
012	State Library of Queensland
013	Shane Cuthbert
014	Queensland Mental Health Commission
015	YFS Ltd
016	Queensland Nurses & Midwives' Union (QNMU)
017	Queensland Council of Social Services (QCOS)
018	ADA Australia
019	Gur A Baradharaw Kod (GBK)
020	Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP)
021	Interim Truth and Treaty Body (ITTb) and Supplementary Submission
022	Queensland University of Technology
023	Queensland Indigenous Family Violence Legal Service
024	Queenslanders with Disability Network Ltd (QDN)
025	Gladys Willis
026	Gudang Yadhaykenu Tribal Governing Council
027	George Dickson of Bundjalung Nation
028	IMAN Wardingarri Aboriginal Corporation
029	Susan Prince
030	Janine Gertz
031	ANTAR (National), Australian Lawyers Alliance, ANTAR QLD
032	Queensland Law Society and Supplementary Submission
033	Queensland Aboriginal and Islander Health Council



<b>Submission No.</b>	<b>Submitter</b>
034	Community Legal Centres Queensland
035	Torres Shire Council
036	Saylor Legal
037	Travis Harbour
038	Name Withheld
039	Alberto Nicotra

## **Appendix C – Officials at public departmental briefing**

**13 March 2023**

### **Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships**

- Mr Jason Kidd, Acting Deputy Director-General, Strategic Policy, Legislation and Program Reform
- Ms Denise Andrews, Acting Executive Director, Strategic Policy and Legislation
- Mr Tony Cheng, Director, Strategic Policy and Legislation
- Mr Matthew Wilkinson, Director, Strategic Policy and Legislation

## **Appendix D – Witnesses at public hearings**

### **Brisbane**

**13 March 2023**

#### **Interim Truth and Treaty Body**

- Ms Sallyanne Atkinson AO, Co-Chair
- Ms Cheryl Buchanan, Co-Chair
- Professor Michael Lavarch, Board Member and Chair of the Legal Advisory Committee
- Ms Katie Kiss, Executive Director

**27 March 2023**

#### **First Peoples' Assembly of Victoria**

- Aunty Geraldine Atkinson, Co-Chair

#### **Queensland Human Rights Commission**

- Mr Scott McDougall, Commissioner
- Ms Heather Corkhill, Senior Policy Officer

#### **Queensland Law Society**

- Ms Chloé Kopilović, President
- Ms Lyndell O'Connor, Co-Chair First Nations Legal Policy Committee
- Mr Joshua Apanui, Legal Policy Officer

#### **Foundation for Aboriginal and Islander Research Action**

- Mr Les Malezer, Chairperson
- Mr Shane Hoffman, Committee member

**17 April 2023**

#### **Interim Truth and Treaty Body**

- Ms Sallyanne Atkinson AO, Co-Chair
- Ms Cheryl Buchanan, Co-Chair
- Professor Michael Lavarch, Board Member and Chair of the Legal Advisory Committee
- Ms Katie Kiss, Executive Director

## Appendix E – Abbreviations

ATSIEB	Aboriginal and Torres Strait Islander Elected Body
Bill	Path to Treaty Bill 2023
department / DSDSATSIP	Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships
Eminent Panel	Eminent Panel of Aboriginal and Torres Strait Islander Queenslanders and non-Indigenous Queenslanders
FAIRA	Foundation for Aboriginal and Islander Research Action
FLPs	Fundamental legislative principles
GBK	Gur A Baradharaw Kod
HRA	<i>Human Rights Act 2019</i>
ITTB	Interim Truth and Treaty Body
LGAQ	Local Government Association of Queensland
LSA	<i>Legislative Standards Act 1992</i>
Masig Statement – Malungu Yangu Wakay	Voice from the Deep
QATSICPP	Queensland Aboriginal and Torres Strait Islander Child Protection Peak
QFCC	Queensland Family & Child Commission
QHRC	Queensland Human Rights Commission
QIFVLS	Queensland Indigenous Family Violence Legal Service
QLS	Queensland Law Society
QMHC	Queensland Mental Health Commission
QNMU	Queensland Nurses & Midwives' Union
QPS	Queensland Police Service
TAC	Treaty Advancement Committee
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
Victorian Treaty Act	<i>Advancing the Treaty Process with Aboriginal Victorians Act 2018</i> (Vic)

## Statements of Reservation

# Stephen BENNETT MP

Member for Burnett

20 April 2023

## Community Support and Services Committee Path to Treaty Bill 2023 Statement of Reservation

The Path to Treaty should always foster the reconciliation of Indigenous Queenslanders to each other and Indigenous Queenslanders to the wider Queensland community so that we can all grow together.

The Path to Treaty is going to be complex as it is not a single treaty and may involve hundreds of treaties between various First Nations peoples and between First Nations peoples and the State Government that will likely take a very long time and significant additional funding to achieve.

The Truth-telling and Healing Inquiry should encourage non-Government organisations that were funded by Government to provide information on medical, education and other services to cooperate with the process so that the whole story - negative and positive - of our shared history is told.

The Path to Treaty must be open and transparent so that all Queenslanders have awareness of its implications for them. All Queenslanders must be treated with respect and as such provided details so they are informed about any changes that may impact on them.

The Path to Treaty should be informed by other treaties and agreements, particularly ones that have been operating successfully for some time. For example, treaties in New Zealand, Canada and other countries.

The Path to Treaty must operate with bipartisan agreement wherever possible to ensure the best outcomes for all Queenslanders. Over the last 30 years Labor State Governments have largely dominated policy affecting First Nations peoples - health, education, policing, justice, and other - with the resultant widening of the closing the gap targets. A better way forward is needed than the current political approach.

The Path to Treaty must focus on practical measures that close the gap and deliver real outcomes for indigenous Queenslanders.

***The naming of the proposed institute and comments about considering renaming the entity to better reflect a more palatable title respectful of Aboriginal and Torres Strait Islanders desires expressed during consultation.***

The committee heard over whelming feedback that there are serious concerns about the naming of proposed entity to include the title "Institute". It is recommended that an

alternative title be considered to better reflect the trust that is needed to support the partnerships to support Aboriginal and Torres Strait Islander people as we get ready for treaty negotiations. As stated by Mr Blair at the public forum in Woorabinda:

*We are institutionalised in dormitories; we are institutionalised in prison; we are institutionalised in mental health. That is why it is a horrible word.*<sup>1</sup>

### ***The Interim Truth and Treaty Body***

The committee had the unique privilege to work closely with the Interim Truth and Treaty Body (ITTB) during the 8 weeks of the Path to Treaty Bill 2023 deliberations. The committee was able to reflect on the work undertaken since July 2019 as part of the Tracks to Treaty commitment.

The Opposition members of the committee welcomed the attendance of members of the ITTB at most of the 10 public forums that were held across the State. Their knowledge and commitment to Path to Treaty and to First Nations people was valuable assistance to the committee's inquiry.

The committee received a submission from the State Library of Queensland (SLQ) that established their connection with the ITTB, as currently hosted by the SLQ and meaningfully supported during this establishment phase through a shared services arrangement. Opposition members of the committee commend the arrangement whereby SLQ is currently providing governance, financial and human resources services. This experience has demonstrated the practical capacity for the SLQ to contribute to commitments to voice, truth-telling, healing, and self-determination.<sup>2</sup>

### ***Confusion between the federal Voice to Parliament debate, the ITTB activities during community visits, the Government cost of living forums and the committee inquiry on the Bill; all happening in a compressed time frame.***

The community at all public hearings expressed a level of confusion between the Community Support and Services Committee's inquiry, the ongoing work of the ITTB and the ongoing references to the current federal Voice to Parliament debate.

To add further confusion in communities was the Government's Regional Community Forums, also discussing the Path to Treaty legislation, and all occurring at the same time.

Written submissions attested to the limited timeframe to consider the Bill:

- The Foundation for Aboriginal and Islander Research Action (FAIRA) (submission 7)
- Local Government Association of Queensland (LGAQ) (submission 9)
- Queensland Mental Health Commission (submission 14)
- YFS Legal Community Legal Centre (submission 15)
- Queensland University of Technology (submission 22)
- Queensland Indigenous Family Violence Legal Service (submission 23)

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<sup>1</sup> George Blair, public forum transcript, Woorabinda, 24 March 2023, p 12.

<sup>2</sup> State Library, submission 12, p 1

- ANTAR (National), Australian Lawyers Alliance (submission 31).

At most public forums participants expressed frustration at the lack of notification of the committee's inquiry and our attendance, in particular the committee experienced poor attendance in Weipa, Longreach, Woorabinda and Inala.

***Scepticism expressed at all community forums of the committee about the process, lack of knowledge of the Bill and lack of trust in government***

The Local Government Association of Queensland (LGAQ) stated:

*One of the biggest challenges is a lot of people (public and local government) don't know what the Treaty is and where it has come from. Although council was involved in initial consultations in Cairns two years ago, there was never a follow up to provide a consultation report and key findings. The lack of closing the loop meant that there is real uncertainty as to where the concept of specifically establishing a Treaty Institute or Truth Telling Inquiry came from. Noting that the proposal seems more reflective of SEQ rather than all regions more broadly.*

A lack of knowledge about the Bill and its relation to the federal Voice was expressed by the community at the committee's public forums.<sup>3</sup> Confusion was expressed as to how the Queensland Treaty interacts with the federal Voice to Parliament. The lack of clear communication around these elements (and lack of consultation) has resulted in many communities not knowing about the Treaty unless explicitly involved in the process.<sup>4</sup>

***Limited consultation and time for engagement.***

The committee received many comments, questions and queries regarding the extremely tight timeframes in progressing the Bill.<sup>5</sup> Considering the Path to Treaty process has been in development since 2019, questions remain about such an important historic piece of legislation being required to be completed and reported in 8 weeks.

Although the objectives of the legislation are clear, a more realistic committee review period would have allowed engagement with Indigenous and non-Indigenous communities that fostered respect and trust in the process.

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<sup>3</sup> Ned David, public forum transcript, Thursday Island, 21 March 2023, p 12; Kitty Gebadi, Deputy Mayor, Northern Peninsula Area Regional Council, public forum transcript, Thursday Island, 21 March 2023, p 19; Harry Seriat, public forum transcript, Thursday Island, 21 March 2023, p 8; Robert Sagigi, public forum transcript, Thursday Island, 21 March 2023, pp 1-2; Sandi Taylor, public forum transcript, Cairns, 20 March 2023, p 18; Percy Neal, public forum transcript, Cairns, 20 March 2023, p 23; Florence Charger, public forum, Weipa, 20 March 2023, p 4; Jaime Gane, public forum, Weipa, 20 March 2023, p 7; Lex Wotton, public forum, Palm Island, 22 March, p 2.

<sup>4</sup> Submission 9.

<sup>5</sup> FAIRA, public hearing transcript, Brisbane, 27 March 2023, p 15; Queensland Human Rights Commission (QHRC), public hearing transcript, Brisbane, 27 March 2023, p 6; Kitty Gebadi, Deputy Mayor, Northern Peninsula Area Regional Council, public forum transcript, Thursday Island, 21 March 2023, p 19; Fred Gela, public forum transcript, Thursday Island, 21 March 2023, p 20.



The Australian Lawyers Alliance stated:

*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.<sup>6</sup>*

***Complexities with the negotiations with the many Traditional owner groups and different language groups.***

The committee heard from many different submitters to the committee hearings around the future of effective and inclusive consultation. The issue will remain around the decentralised and geographic size of Queensland and ensuring First Nations' voices are going to be heard including those who were displaced, in the Path to Treaty process.

It is strongly recommended that the future Treaty Institute consider how to effectively engage all over Queensland. There is merit in considering separate geographical representation. This would build trust and effectiveness in community consultation and engagement. There is merit in suggestions that additional sub committees of the Institute be created from North Queensland, Western Queensland, Central Queensland, and Southeast Queensland.

It is suggested that the new body currently being suggested – the “First Nations Treaty Institute” - will need to create sub committees to deal with the sheer complexities and geographical challenges of ensuring timely and dignified consultation with all Aboriginal and Torres Strait Islander people in the preparations of communities' readiness to negotiate treaties.

*Opposition members note the evidence received from the ITTB in during the Brisbane public hearing:*

*Prof. Lavarch: ... All of this has been informed by looking at what is out there and trying to get some inspiration from that, but, as Cheryl very correctly points out, Queensland is unique. It has its own story within Australia. Obviously in the Torres Strait, amongst other things, we have two very distinctive First Nations communities in this state, so we need to very much customise the models that we are proposing to work for Queensland.*

*Ms Buchanan: What we have here are over 150 First Nations. People always talk about Victoria; we are very different. I think there may be 35 or something. It is geographically a much bigger area as well. As Michael just pointed out, there are two very distinct cultural groups who have law, custom, language and so on. We have over 150 languages and language groups potentially in Queensland as well, so it is quite different.*

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<sup>6</sup> Submission 31.

*Mr BENNETT: That is helpful. Considering Ms Buchanan raised it—it was going to be a question of mine later—there are 150 First Nations groups identified, but within those 150 I guess there may be capacity that we have to negotiate even further down within those First Nations groups to make sure we have an inclusive negotiation.*

*Ms Buchanan: It could be. As you know, we have a native title process that is taking place here. For example, in New Zealand, they have not had that process at all. What we have seen in some of the northern communities, for example, is that some are very much clan based, so it is not just within a nation context at all.*

*Mr BENNETT: And family based as well, to be fair.*

*Ms Buchanan: It could be that clans come forward and want to sign treaties. There are also discussions about First Nations signing treaties with each other potentially, before we get to the process of signing treaties with government. I welcome that in some ways because we talk about healing in this process as well. In terms of healing there could not be a greater thing, because what native title did was divide families. Brothers and sisters did not talk to each other and so on. It has a huge negative impact on people. There were some positives, but there is a lot to be mended in terms of how that native title process has affected our First Nations groups.*

***Timeline of the proposed “Truth telling and Healing Inquiry” conflicting recommendations particularly the Human Rights Commissioner recommending 5 years.***

In summary, the ITTB recommends that three amendments be made to the Bill prior to its passage by Parliament. The ITTB’s recommendation 2 states *Clause 64 (2):\ on the Establishment and Term of Inquiry:*

*That the Inquiry be established for a term of not more than five years, as opposed to the three years currently proposed. This will be supported by an amendment to Clause 87 (below) to include a requirement that the Inquiry report to the Minister before the expiration of three years, to confirm the need for a further two-year period of operation (or otherwise).*

The Opposition members of the committee support the submissions that recommend consideration the Inquiry be established for a term of not more than five years.

According to the Queensland Human Rights Commission:

*A genuine commitment to reframing the relationship between the government and First Nations communities should reflect the importance of allowing adequate time to consider the foundational terms governing these two distinct and important treaty and truth-telling processes. The time frame of three years to complete the inquiry is ambitious, if not unrealistic. Notably, the Yoorrook commission in Victoria has sought a two-year extension beyond its three-year time frame. Given the much greater size, cultural diversity, and different historical and contemporary experiences of Queensland communities, it is apparent that a five-year period would be more appropriate and*

*would reduce the risk of disengagement by communities that feel pressured into fitting within a time frame.*<sup>7</sup>

The Bill proposes that the term of the Inquiry be no more than three years, although the possibility for extension is expressly recognised in clause 64 (3). A range of submissions have suggested that three years will prove to be an unrealistic and insufficient timeframe for the Inquiry's operation. For example, Scott McDougall of the Queensland Human Rights Commission stated:

*As I mentioned before, we think a five-year time frame would be more realistic. No doubt you would have got a taste last week on your trip of not just the logistical challenges the inquiry will face but also the level of education and preparation work that will be required in communities for the community to understand what the process is about and then be willing to participate in it. We do hold concerns that there is a risk that some communities—which will be waiting and watching to see whether it is a fair dinkum process—may not engage if they think this is not serious or their decision-making processes are not being treated with respect. I am just speculating, but I do think that is a real risk. In places like Mount Isa, for example, there are people for whom English is their second or third language. That is an issue that I do not think has presented in Victoria. There are lots of reasons it would be more realistic to think that a five-year time frame is important.*<sup>8</sup>

Evidence to the Committee has referenced the recent experience of the Victorian Yoorrook Justice Commission, which has been granted a further 12-month extension. In its June 2022 Interim Report, the Yoorrook Justice Commission expressly called out the need for significant time for community engagement and the need to build trust prior to engaging in formal processes of the Inquiry:

The Victorian experience and the wider arguments made in the evidence is quite compelling that the three-year timeframe will almost inevitably be extended. Given this, the ITTB believes it would be preferable to establish the Inquiry with a five-year timeframe and greatly lessen the prospect of further extensions being sought.

To balance the extension of the Inquiry term and recognising that the work of the Inquiry might be concluded in advance of five years, it is also suggested that Clause 87 be amended to provide for a report to the Minister after three years of the Inquiry. This report will provide advice as to progress and whether all the final two years will be required to complete the Inquiry.

It is not proposed that the possibility of further extension is entirely removed, as flexibility to account for the unforeseen is always valuable - for example, future alignment with a national truth-telling inquiry process under the now mooted Makarrata Commission - but the clear expectation is that the Inquiry would be completed within five years.

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<sup>7</sup> Scott McDougall, Queensland Human Rights Commission, public transcript hearing, Brisbane 27 March 2023, p 9-10.

<sup>8</sup> Public transcript hearing, Brisbane 27 March 2023, p 6

### ***References to the preamble needing amendment.***

The committee's report includes a discussion of the preamble and changes to the preamble recommended by submitters, including:

- paragraph 2 to recognise 'Aboriginal and Torres Strait Islander peoples as the traditional owners of their lands, seas, waters, air and resources since time immemorial'<sup>9</sup>
- paragraph 4 to remove the notion that First Nations peoples 'assert' they have never ceded their sovereignty<sup>10</sup>
- paragraph 5 to include that Aboriginal and Torres Strait Islander peoples have a continuing responsibility 'to manage and protect' their lands, seas, waters, air, and resources<sup>11</sup>
- paragraph 6 to include a reference to 'the forced and illegal removal of Aboriginal and Torres Strait Islander men, women and children'<sup>12</sup>
- paragraph 10 to include a reference to 'redress'<sup>13</sup>
- an acknowledgement that the Path to Treaty is to be conducted using a rights-based approach<sup>14</sup>
- an acknowledgement of the stolen generations in Queensland<sup>15</sup>
- an acknowledgement of the contribution of Indigenous servicemen in the Second World War and the lack of support for them on their return<sup>16</sup>
- a reference to the Masig Statement – Malungu Yangu Wakay (Voice from the Deep):
- signed as part of the 85th Anniversary celebrations of the First Island Councillors Conference that took place on Masig Island on 23rd August 1937
- includes aims to achieve self-determination for the people of the Torres Strait and Northern Peninsula area; to freely determine political status and pursue economic, social and cultural development; self-government in matters relating to internal and local affairs, and to create partnerships with regional stakeholders, and the Queensland and federal governments to achieve the region's goals and aspirations.<sup>17</sup>

The committee report includes a recommendation that the preamble should include a reference to the Masig statement.

### ***Confusion and inconsistency of the Bill in relation to proposed membership and appointment of the Treaty Council Institute (Clause 19) by the Governor in Council on recommendation of the Minister***

The appointment of Treaty Council Institute members was explored by Opposition members with representatives from the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships:

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<sup>9</sup> David Saylor, public forum transcript, Townsville, 22 March 2023, p 14; Saylor Legal, submission 36, Preamble, Path to Treaty Bill 2023.

<sup>10</sup> Ned David, public forum transcript, Thursday Island, 21 March 2023, p 4; GBK, submission 19.

<sup>11</sup> GBK, submission 19.

<sup>12</sup> David Saylor, public forum transcript, Townsville, 22 March 2023, p 14; Saylor Legal, submission 36.

<sup>13</sup> David Saylor, public forum transcript, Townsville, 22 March 2023, p 14; Saylor Legal, submission 36.

<sup>14</sup> Queensland Nurses & Midwives' Union (QNMU), submission 16, pp 6-7.

<sup>15</sup> Florence Onus, public forum transcript, Townsville, 22 March 2023, p 23.

<sup>16</sup> Donah Illin, public forum transcript, Townsville, 22 March 2023, p 18.

<sup>17</sup> Torres Shire Council, submission 35, p 1.

*Mr BENNETT: I think you mentioned in your briefing that the Minister will take an active role in the initial appointments. Is that a correct understanding from your opening statement?*

*Mr Kidd: Yes, the initial council appointments will be Governor in Council appointments on the minister's advice. That is to allow the council to be in place for that two-year period. About 18 months post their appointment they will be giving advice to the minister around the longer-term arrangements for the council. The intention there is quite likely to build in a more representative sort of appointment process to that council, taking into account some of the other reforms that are happening concurrently at the moment around voice to government, the Closing the Gap agenda, Local Thriving Communities and other significant reforms. That will allow for that process to occur.<sup>18</sup>*

...

*You need that initial group to be able to have the co-design discussions with government about what that might look like in terms of representative structures going forward. That is why the proposal in the bill is for a two-year appointment period with advice to government after 18 months around what that might look like in terms of representative structures going forward.<sup>19</sup>*

The ITTB submitted in relation to the appointment of Council members:

*The TAC Report clearly outlines that the governance of the Institute is to be in the hands of those individuals who have been chosen to represent and have the support of First Nations peoples across Queensland. This representative structure may take some time to develop, and as such, an interim process will be in place represented by an Institute Council appointed for the inaugural period.<sup>20</sup>*

Stakeholders questioned the independence and effectiveness of the appointment process, including representatives from FAIRA at the public hearing in Brisbane:

*One of our concerns—and it is a major concern—is with the lack of independence of the treaty council. In its response to our submission the department said that the independence of the council is specified in several sections in the bill; however, when the council is appointed by the Governor in Council on the advice of the minister, it is really the minister and the government who choose the members of the council. That really does not indicate true independence, even though the law might say that they should act independently.<sup>21</sup>*

***There are reported short-comings of those compelled to produce documents and answer questions to the inquiry be expanded to include other entities, for example the Queensland Police Service.***

Opposition members commend the statement of the Queensland Human Rights Commission:

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<sup>18</sup> Public briefing transcript, Brisbane, 13 March 2023, p 8.

<sup>19</sup> Public briefing transcript, Brisbane, 13 March 2023, p 8.

<sup>20</sup> ITTB, submission 21, p 15.

<sup>21</sup> Mr Hoffman, FAIRA, Public hearing transcript, Brisbane, 27 March 2023, p 15

*Given the central role of the Queensland Police Service in the colonisation of Queensland and, again, using the words of the preamble, the devastating and ongoing impact of that colonisation on Aboriginal and Torres Strait Islander people, it is fundamentally important that the inquiry have the power to compel the Queensland Police Service to participate in the inquiry.<sup>22</sup>*

Opposition members also note the words of IMAN Wardingarri Aboriginal Corporation:

*We further note that there does not appear to be any clause or platform for compulsion of documentation from non-government entities. 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 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 if 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 or 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 non-government entities to withhold important testimony and documentation.<sup>23</sup>*

*It is the policy intent that the powers of the Truth-telling and Healing Inquiry will apply to the Commissioner of the Queensland Police Service.*

*It is intended the Bill will be clarified to remove any doubt prior to passage of the Bill.<sup>24</sup>*

The committee report includes discussion of this issue and a committee comment, Recommendation 15.

The Committee recommends that the responsible Minister consider amending clause 87 of the Path to Treaty Bill to include provision for a review 12 months after the commencement of the inquiry to ensure the powers of the inquiry continue to support the effective gathering of information that reveals the full impact of colonisation on First Nations people of Queensland.

## **Conclusion**

The opposition members of the Community Support and Services Committee want to thank all who participated in the committee's deliberations, in particular the staff of the committee secretariat and Hansard.

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<sup>22</sup> QHRC, public hearing transcript, Brisbane, 27 March 2023, pp 6-7.

<sup>23</sup> Submission 28, p 5

<sup>24</sup> DADATSIP, correspondence, 31 March 2023, p 1.

It is important to acknowledge the progress of the First Nations Treaty Institute and the Truth Telling and Healing Inquiry through the Path to Treaty Bill 2023.

We see the Bill as an important step forward in a better future for all Queenslanders and our relationships with First Nations peoples.

*“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.”<sup>25</sup>*

Mick Gooda, Ghungalu man, Treaty Advancement co-chair and former Social Justice Commissioner



**Stephen Bennett**



**Mark Robinson**

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<sup>25</sup> Joe Hinchliffe, ‘Queensland to progress on ‘historic’ Indigenous treaty while pledging new crackdown on youth crime’, *The Guardian* (online, 15 February 2023)



**MICHAEL BERKMAN MP**

*Member for Maiwar* ▲

16 February 2023

### **Member's Statement - CSSC Report No. 30:**

#### **Path to Treaty Bill**

To begin, I wish to express my strong support for the Path to Treaty Bill (**Bill**). The establishment of a framework to actively facilitate and progress treaty negotiations is a vitally important and long overdue step for Queensland, and one that the Queensland Greens and I welcome wholeheartedly.

This isn't intended to be a statement of reservation in the conventional sense. Rather, in this statement I seek to elaborate and add my perspective on a few issues that are mostly addressed in the Committee's report (**Report**) on the Bill to some extent. The very short time frame allowed for the Committee's consideration of the Bill left very little time for individual members to contribute this kind of nuance to the final report - this is a disappointing missed opportunity, especially given the importance of the Bill and the very collaborative approach the Committee has taken in this inquiry. I have little doubt that, given more time, the committee could have considered and reached agreement on most, if not all, of these issues.

#### **Insufficient time for meaningful consultation**

The Committee of the Legislative Assembly determined that the Committee would have only 8 weeks to conduct the inquiry, which included 3 sitting weeks and the Easter break. While this is slightly longer than the constitutional minimum 6 week consultation period, it is patently inadequate to meaningfully consult with the Queensland community on such an important piece of legislation.

I understand the reporting deadline was decided on the basis that the Government would like the Bill to be debated during the regional sitting week in Cairns. As a result, the Committee was only able to hold 9 in-person forums on the Bill, that were no more than 2 hours long, and other communities indicated their strong interest in having a forum with the Committee that we could not facilitate.

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The Secretariat, and especially the Committee Secretary, Lynda Pretty, went to extraordinary lengths to facilitate the best possible consultation and to prepare the most comprehensive report possible in the time available. The Secretariat's work was outstanding as always, and I make no criticism whatsoever of them.

While the Report acknowledges concerns about the limited consultation at section 1.3.1, it doesn't paint a full picture of how extensive this concern was, nor is it possible to reflect the views of the countless communities across the State who had no opportunity to participate in a forum or those who didn't make a submission as a result of the very short deadline.

Many First Nations people and communities have a well-founded mistrust of government, which is only exacerbated by an approach that shows so little regard for meaningful consultation on the Bill with all these communities. Similarly, this mistrust is reinforced by the Government's decision to blithely introduce this Bill the day after it introduced the so-called "Strengthening Community Safety Bill" - a bill that will only compound the overrepresentation of First Nations children in youth detention.

The ITTB and its predecessor bodies have doubtlessly done good work engaging more extensively around the Bill, but this is the only opportunity the Queensland Parliament has to consult with the entire state about these seminal reforms. This opportunity should not have been cut so short simply to meet the political imperative of passing the Bill during the Cairns regional sitting of Parliament.

The Bill provides that "partnership and good faith" will be fundamental principles for the administration of the Act when passed. It is truly disappointing that the Government, through decisions of the Committee of the Legislative Assembly, has rushed the committee process and had so little regard to these principles so early on the legislative Path to Treaty.

### **Independence from Government**

The rushed consultation is particularly pertinent in light of some concerns expressed by stakeholders around the independence of the bodies established by the Bill.

I don't entirely share the Committee's view "that the Bill has the correct balance between independence and accountability", and believe that the Minister's role in the establishment of the Institute and the Inquiry should be informed by more detailed consultation with Traditional Owners and First Nations communities.

*Treaty Institute Council*

The Minister, at least in the initial phase of the Bill, plays a pivotal role in the appointment of the inaugural members of the Treaty Institute Council (**Council**), which has generated some concern about the independence of the Institute. While the ITTB has stepped into this gap and is consulting with the community around the membership of the inaugural Council, the Bill should at least impose more stringent consultation obligations on the Minister. Additionally, with more time for the Committee's inquiry, the Committee could have taken a more active role in such consultation and provided more useful advice to the Minister in this respect.

While the Bill contemplates the development by the Treaty Institute of a more consultative, independent process for selection of subsequent members of the Council, it's not clear what this process will look like or whether it might require legislative amendment. The Government must remain open to such further amendments around appointment processes beyond the inaugural Council to maintain faith in the independence of both the First Nations Treaty Institute (**Institute**) and the Council.

#### *Truth-telling and Healing Inquiry*

As set out in the Report, stakeholders expressed similar concerns around the independence of the Truth-telling and Healing Inquiry (**Inquiry**), in respect of the Minister's role in both appointing the five members of the Inquiry and determining the terms of reference (**ToR**). The fundamental difference from the appointment of Council members is that the development of the ToR (and most like the appointment of Inquiry members) are one-off processes, without the benefit of further development of an independent process. Additionally, the ToR must be prepared very quickly - within only one month of the Bill's commencement. In this light, and in the interests of offering First Nations people meaningful self-determination at this point, I believe the Bill would benefit from a strict requirement that the Minister consult widely on both preparing the ToR and appointing members of the Inquiry.

One issue that received little or no attention throughout the Community's consultation is that the Inquiry, unlike the Institute, is not established as an independent statutory body. Rather, it appears that the Inquiry will be established within the Department of Seniors, Disability Services, Aboriginal and Torres Strait Islander Partnerships. Clause 67 of the Bill makes clear that members of the Inquiry are appointed under the Bill, rather than Public Sector Act. However, clause 90 of the Bill provides that the Inquiry will rely on the Department for staff, resources and facilities.

This is a vastly different proposal from a Royal Commission of Inquiry or an independent statutory body, and creates a real risk that the Department will be effectively inquiring into itself, since so much of the colonial activity occurred at the hands of, or in plain sight of, the Department's predecessors.

If the Inquiry must be established within the executive, which seems very likely at this point, it should at least be established within a department other than the Department of Seniors, Disability Services, Aboriginal and Torres Strait Islander Partnerships. I suggest that the most sensible home for the Inquiry would be the Department of Justice and Attorney-General, under the oversight of the State's first law officer.

In making these observations, my interest is only in ensuring that First Nations people and communities can have confidence in the way the Inquiry is established, and I take no issue with or impugn the integrity of the Minister or officers of the Department of Seniors, Disability Services, Aboriginal and Torres Strait Islander Partnerships.

### **Coercive powers of the Inquiry**

Finally, while I respect and accept the final position put by the ITTB in relation to the Inquiry's coercive powers, I wish to put on the record some concerns about the consequences of the position ultimately reflected in the Committee's Recommendation 15.

For clarity, the ITTB in its supplementary submission acknowledged, as a "major critique" of the Bill, that the Inquiry's coercive powers may be inadequate:

"The full suite of compulsion powers was not the model of the Truth-telling and Healing Inquiry envisaged by the Treaty Advancement Committee, and the ITTB remains of the view that a culturally lead, non-adversarial model that is not a Royal Commission has many advantages. However, the ITTB accepts that if non-government entities fail to fully engage in the Inquiry and provide required documents and information, public faith in the Inquiry and thereby potentially First Nation participation might be undermined.

The answer of whether wider powers will in practice be required will come from the operational experience of the Inquiry. In short, is the work or credibility of the Inquiry being hampered by the coercive powers being only available when dealing with government? For this reason, the ITTB recommends that within 12 months of the Inquiry commencing it reports to the government through the Minister on whether changes are required to its functions, operations and powers"

The central concern here is the history of missions across the State that were operated by churches and faith groups, and their role in the dehumanisation, dispossession, and countless other atrocities committed against Aboriginal and Torres Strait Islander people. The fundamental question is whether churches and other non-government organisations will be forthcoming in providing all information in their possession, especially where this will demonstrate their culpability.

It has often been said that the best predictor of future behaviour is past behaviour. The resistance from the church, and especially the Catholic Church, to the establishment of the Royal Commission into Institutional Responses to Child Sexual Abuse bodes poorly for the prospects of an honest, collaborative, non-adversarial, forthcoming approach to the Inquiry.

While I sincerely hope that the culturally led, non-adversarial model contemplated by the Treaty Advancement Committee and the ITTB is sufficient for the task, I'd note that the establishment of a more powerful Inquiry does not preclude such an approach. Conversely, the establishment of an Inquiry with limited coercive powers will not prevent unwilling participants taking an adversarial approach.

Perhaps most importantly, as reflected in the ITTB's supplementary submission, I'm concerned that the initial establishment of an Inquiry with ineffective coercive powers will undermine trust in the Inquiry and deter First Nations people from fully engaging with it. On balance, this strikes me as the greatest risk to the efficacy of the Inquiry and, while the 12 month review is welcome, I would prefer the establishment of a more powerful Inquiry in the first instance.

It would be a welcome step for the Minister to make clear his willingness to expand the powers of the Inquiry in response to any apparent reticence to fully cooperate with the Inquiry.



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