

24 March 2023

Our ref: LP:MC

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

By email: [REDACTED]

Dear Madam/Sir

### **Path to Treaty Bill 2023 – Community Support and Services Committee**

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

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

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

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

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

### **Background**

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

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

## Path to Treaty in Queensland Bill 2023

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

### Other submissions to the inquiry

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

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

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

### Previous consultation phases

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

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

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

Briefly, these include:

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

### Limited timeframes

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

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

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

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

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

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<sup>2</sup> Treaty Advancement Committee Report (Report, October 2021).

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

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

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

### **Flexibility in consultation**

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

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

### **Cultural safety**

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

### **Resourcing**

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

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

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

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

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

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

### **Real commitments for change**

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

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

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

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

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

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

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

Yours faithfully

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President