

6 April 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

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

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

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

Executive Summary/Key Points:**Timeframes**

We stated during our appearance, that:

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

We note the QLS submission states:

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

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

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

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

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

Cultural framework

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

A cultural framework is generally defined as:

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

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

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

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

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

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

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

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

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

⁴ Queensland Human Rights Submission, p5.

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

Submission name

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

Recommendations:

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

Selection of members

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

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

Resourcing

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

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

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

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

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

Clause 55 – indictable offences

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

Legislative Background

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

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

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

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

Division 2 Criminal History

Section 50 Meaning of *relevant duty*

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

⁸ *Ibid*, s 73.

Submission name

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

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

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

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

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

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

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

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED]

Yours faithfully

[REDACTED]
Chloé Kopilović
President

⁹ Ibid, s 50(1).

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