2 December 2019

Path to Treaty

Department of Aboriginal and Torres Strait Islander Partnerships

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CITY EAST QLD 4002

***By email:*** ***treaty@datsip.qld.gov.au***

Dear Eminent Panel

Thank you for the opportunity to make a submission to the Path to Treaty consultation.

The Queensland Human Rights Commission has functions under the *Anti-Discrimination Act 1991* and the *Human Rights Act 2019* to promote an understanding and discussion of human rights in Queensland, and to provide information and educative services about human rights.

The Path to Treaty is part of a package of staged reforms aimed at reframing the relationship between the Queensland government and Aboriginal and Torres Strait Islander peoples in Queensland. It is to start the negotiations towards treaties with the Aboriginal and Torres Strait Islander peoples of Queensland.

The human rights of Aboriginal and Torres Strait Islander peoples have a significant role in both the process for negotiating treaties, and in the content of the treaties.

The special importance of human rights for Aboriginal and Torres Strait Islander peoples of Queensland is recognised in the preamble to the *Human Rights Act 2019*, which also acknowledges the distinct and diverse spiritual, material, and economic relationship of Aboriginal and Torres Strait Islander peoples with the lands, territories, waters, coastal seas and other resources, and the particular significance of the right to self-determination.

Human rights must be considered in the development of government policy and legislation, and in delivering services to the people of Queensland. The cultural rights of Aboriginal and Torres Strait Islander peoples are specifically provided for in section 28 of the *Human Rights Act 2019*, as follows:

**Cultural rights – Aboriginal peoples and Torres Strait Islander peoples**

1. Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights.
2. Aboriginal peoples and Torres Strait Islander peoples must not be denied the right, with other members of their community —
	1. to enjoy, maintain, control, protect and develop their identity and cultural heritage, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings; and
	2. to enjoy, maintain, control, protect, develop and use their language, including traditional and cultural expressions; and
	3. to enjoy, maintain, control, protect and develop their kinship ties; and
	4. to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom; and
	5. to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.

Aboriginal peoples and Torres Strait Islander peoples have the right not to be subjected to forced assimilation or destruction of their culture.

The enunciation of these rights should be used as guidance in identifying the issues to be considered in the development of the treaties.

The cultural rights in the *Human Rights Act 2019* are drawn from the *International Covenant on Civil and Political Rights*, article19, and the *United Declaration on the Rights of Indigenous Peoples*, articles 25 and 31. These international agreements and the commentary on them may also provide guidance for the participants.

As well of the key principle of respect for and protection of culture, the principles of self-determination, participation in decision making (duty to consult, free prior and informed consent and good faith) and equality and non–discrimination should also be integral concepts in the path to treaty. This entails developing a pathway that is accessible to everyone, in every part of the State, with conversations being conducted by local community members.

The QHRC is willing to assist in any way that is useful in this process.

Yours sincerely



**SCOTT MCDOUGALL**

**Queensland Human Rights Commissioner**