



# Path to Treaty Act 2023

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Queensland

# Path to Treaty Act 2023

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
<b>Division 1</b>	<b>Introduction</b>	
1	Short title .....	7
2	Commencement .....	7
3	Act binds all persons .....	7
4	Relationship with other Acts and laws .....	7
<b>Division 2</b>	<b>Purposes and principles</b>	
5	Main purposes of Act .....	7
6	Principles for administering Act .....	8
<b>Division 3</b>	<b>Interpretation</b>	
7	Definitions .....	9
8	Meaning of treaty negotiations .....	9
<b>Part 2</b>	<b>First Nations Treaty Institute</b>	
<b>Division 1</b>	<b>Establishment</b>	
9	Establishment .....	9
10	Legal status .....	10
11	Treaty Institute does not represent the State .....	10
12	Application of other Acts .....	10
<b>Division 2</b>	<b>Functions and powers</b>	
13	Functions .....	11
14	Powers .....	13
<b>Division 3</b>	<b>Treaty Institute Council</b>	
<b>Subdivision 1</b>	<b>Establishment, functions and powers</b>	
15	Establishment .....	13
16	Functions .....	13
17	Powers .....	14
18	Treaty Institute Council to act independently and in public interest .....	14

Contents

---

<b>Subdivision 2</b>		<b>Membership</b>	
19	Treaty Institute Council members	14	
20	Term of appointment	15	
21	Conditions of appointment	15	
22	Chairpersons—general	16	
23	Administrative chairperson	16	
24	Members to act independently and in public interest	17	
<b>Subdivision 3</b>		<b>Treaty Institute Council meetings</b>	
25	Conduct of business	17	
26	Meetings of Treaty Institute Council	17	
27	Presiding at meetings	18	
28	Quorum at meetings	18	
29	Voting at meetings	19	
30	Disclosure of interests at meetings	19	
31	Minutes	20	
<b>Division 4</b>		<b>Advisory committees</b>	
32	Treaty Institute Council must establish particular advisory committees		20
33	Treaty Institute Council may establish other advisory committees		21
34	Requirements for establishing advisory committees		21
35	Advisory committee advice and recommendations		22
36	Restriction on delegation to advisory committees		22
<b>Division 5</b>		<b>Treaty Institute CEO</b>	
37	Appointment		22
38	Responsibilities		23
39	Term of appointment		23
40	Conditions of appointment		24
41	Delegation		24
<b>Division 6</b>		<b>Treaty Institute secretary</b>	
42	Appointment		25
43	Responsibilities		25
44	Term of appointment		26
45	Conditions of appointment		26
46	Delegation		27
<b>Division 7</b>		<b>Other staff</b>	
47	Treaty Institute staff		27

<b>Division 8</b>	<b>Reports</b>	
48	Inaugural report . . . . .	27
49	Annual reports . . . . .	28
<b>Division 9</b>	<b>Other matters</b>	
<b>Subdivision 1</b>	<b>Preliminary</b>	
50	Definitions for division . . . . .	29
<b>Subdivision 2</b>	<b>Provisions relating to particular office holders</b>	
51	Vacancy in office . . . . .	29
52	Suspension of Treaty Institute Council members . . . . .	30
53	Removal of Treaty Institute Council members . . . . .	31
54	Removal of senior executive officers . . . . .	32
55	Disqualification of Treaty Institute Council members and senior executive officers . . . . .	32
56	Other paid employment prohibited—senior executive officers . . . . .	33
57	Conflicts of interest—senior executive officers . . . . .	34
58	Preservation of rights . . . . .	34
59	Protection from civil liability . . . . .	34
<b>Subdivision 3</b>	<b>Criminal history</b>	
60	Criminal history reports . . . . .	35
61	Requirement to disclose changes in criminal history . . . . .	36
62	Confidentiality of criminal history information . . . . .	36
<b>Subdivision 4</b>	<b>Disclosure of confidential information</b>	
63	Confidentiality of information . . . . .	38
<b>Part 3</b>	<b>Truth-telling and Healing Inquiry</b>	
<b>Division 1</b>	<b>Establishment, terms of reference and functions</b>	
64	Establishment and term . . . . .	39
65	Terms of reference . . . . .	40
66	Functions . . . . .	40
<b>Division 2</b>	<b>Membership</b>	
67	Inquiry members . . . . .	41
68	Term of appointment . . . . .	42
69	Conditions of appointment . . . . .	42
70	Chairperson . . . . .	42
71	Members to act independently and in public interest . . . . .	43
<b>Division 3</b>	<b>Conduct of inquiries</b>	
<b>Subdivision 1</b>	<b>General</b>	

Contents

---

72	Procedures . . . . .	43
73	How Inquiry may perform its functions . . . . .	45
74	Truth-telling sessions and truth-telling hearings to be held in public except in particular circumstances . . . . .	45
75	Record of proceedings to be kept . . . . .	45
76	Changes to membership of Inquiry . . . . .	46
77	Protection of members and persons appearing before Inquiry . .	46
<b>Subdivision 2</b>	<b>Truth-telling sessions</b>	
78	Inquiry may hold truth-telling sessions . . . . .	46
<b>Subdivision 3</b>	<b>Giving documents and other things to Inquiry</b>	
79	When government entities hold documents and other things . . .	47
80	Inviting entities to give documents and other things to Inquiry . .	47
81	Giving production notices . . . . .	48
82	Principles for dealing with production notices . . . . .	50
83	Grounds for non-compliance with production notices . . . . .	50
<b>Subdivision 4</b>	<b>Truth-telling hearings</b>	
84	Inquiry may hold truth-telling hearings . . . . .	51
85	Giving attendance notices . . . . .	52
86	Offences . . . . .	52
<b>Division 4</b>	<b>Reporting requirements</b>	
87	Requirement to keep Minister informed . . . . .	53
87A	Report to Minister about particular provisions . . . . .	53
88	Report to Minister on findings . . . . .	54
<b>Division 5</b>	<b>Other matters</b>	
89	Protection from civil liability . . . . .	54
90	Staffing arrangements and administrative support . . . . .	55
91	Confidentiality of information . . . . .	55
92	False or misleading information . . . . .	56
93	Disapplication of Recording of Evidence Act 1962 . . . . .	57
<b>Part 4</b>	<b>Miscellaneous</b>	
94	Review of Act . . . . .	57
95	Regulation-making power . . . . .	57
<b>Schedule 1</b>	<b>Dictionary</b> . . . . .	58

## Path to Treaty Act 2023

**An Act to establish the First Nations Treaty Institute to prepare a framework for treaty negotiations with Aboriginal peoples and Torres Strait Islander peoples and to support Aboriginal peoples and Torres Strait Islander peoples to participate in treaty negotiations, and to provide for the establishment of the Truth-telling and Healing Inquiry to inquire into the continuing impacts of colonisation on Aboriginal peoples and Torres Strait Islander peoples**

### Preamble

In enacting this Act, the Parliament of Queensland recognises—

- 1 Aboriginal peoples and Torres Strait Islander peoples of Queensland are made up of many distinct communities and groups, each with their own unique laws, traditions, languages, culture and traditional knowledge.
- 2 Aboriginal peoples and Torres Strait Islander peoples successfully governed their lands, seas, waters, air and resources for at least 65,000 years prior to British colonisation of Queensland.
- 3 The colonisation of Queensland occurred without the consent of Aboriginal peoples and Torres Strait Islander peoples and often against their active resistance.
- 4 Aboriginal peoples and Torres Strait Islander peoples assert they have never ceded their sovereignty over their lands, seas, waters, air and resources and they continue to assert their sovereignty.
- 5 Aboriginal peoples have a continuing responsibility for their lands, seas, waters, air and resources under Aboriginal law and Aboriginal tradition. Torres Strait Islander peoples have a

continuing responsibility for their lands, seas, waters, air and resources under Torres Strait Islander law and Ailan Kastom.

- 6 The colonisation of Queensland and the dispossession of the lands, seas, waters and air traditionally occupied and used by Aboriginal peoples and Torres Strait Islander peoples had a devastating, and ongoing, impact on Aboriginal peoples and Torres Strait Islander peoples.
- 7 The foundation for a respectful and mutually beneficial relationship between Aboriginal peoples, Torres Strait Islander peoples and the Queensland community generally is to provide for processes and opportunities to hear the voices of Aboriginal peoples and Torres Strait Islander peoples.
- 8 The process of truth-telling will help inform the Queensland community generally and help heal the trauma suffered by Aboriginal peoples and Torres Strait Islander peoples as a result of colonisation. The process will inform treaty negotiations between Aboriginal peoples, Torres Strait Islander peoples and the State, highlight the resilience, enduring culture, law and knowledge of Aboriginal peoples and Torres Strait Islander peoples, and demonstrate how these strengths are priceless assets for Queensland.
- 9 Treaties between Aboriginal peoples, Torres Strait Islander peoples and the State will act as recognition of the impacts of colonisation and the State's commitment to working with Aboriginal peoples and Torres Strait Islander peoples to build a new future.
- 10 The truth-telling and path to treaty processes will provide measurable economic, social, cultural and environmental benefits for Aboriginal peoples, Torres Strait Islander peoples, the Queensland community generally and the State.



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## **Part 1 Preliminary**

### **Division 1 Introduction**

#### **1 Short title**

This Act may be cited as the *Path to Treaty Act 2023*.

#### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

#### **3 Act binds all persons**

- (1) This Act binds all persons, including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) However, the State, the Commonwealth or another State can not be prosecuted for an offence against this Act.

#### **4 Relationship with other Acts and laws**

This Act does not affect a right or interest an Aboriginal person, a Torres Strait Islander person or a representative entity has under—

- (a) another Act; or
- (b) a law of the Commonwealth or another State.

### **Division 2 Purposes and principles**

#### **5 Main purposes of Act**

The main purposes of this Act are to—

- (a) establish the First Nations Treaty Institute to—

- (i) develop and provide a framework for Aboriginal peoples, Torres Strait Islander peoples and the State to enter into treaty negotiations; and
  - (ii) support Aboriginal peoples and Torres Strait Islander peoples to participate in treaty negotiations; and
- (b) provide for the establishment of the Truth-telling and Healing Inquiry to inquire into, and report on, the impacts of colonisation on Aboriginal peoples, Torres Strait Islander peoples and the history of Queensland.

## **6 Principles for administering Act**

- (1) The main principle for administering this Act is to ensure that, in partnership and good faith, the rights and history of Aboriginal peoples and Torres Strait Islander peoples are acknowledged and respected in accordance with—
- (a) the *Human Rights Act 2019*; and
  - (b) the principles of the United Nations Declaration on the Rights of Indigenous Peoples.
- (2) Without limiting subsection (1), the following principles also apply for the administration of this Act—
- (a) the importance of self-determination for Aboriginal peoples and Torres Strait Islander peoples;
  - (b) the importance of Aboriginal peoples and Torres Strait Islander peoples being able to give free, prior and informed consent as part of treaty negotiations and the making of a treaty;
  - (c) the importance of respecting and protecting Aboriginal law, Aboriginal tradition, Torres Strait Islander law and Ailan Kastom;
  - (d) the importance of equality and non-discrimination.

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## **Division 3                      Interpretation**

### **7                      Definitions**

The dictionary in schedule 1 defines particular words used in this Act.

### **8                      Meaning of *treaty negotiations***

- (1) *Treaty negotiations* are negotiations—
  - (a) about entering into a treaty between the State and Aboriginal peoples or Torres Strait Islander peoples; and
  - (b) entered into and conducted under the treaty-making framework.
- (2) Without limiting subsection (1), treaty negotiations may relate to—
  - (a) a particular area of Queensland; or
  - (b) a particular area of Queensland waters; or
  - (c) particular Aboriginal peoples; or
  - (d) particular Torres Strait Islander peoples.
- (3) To remove any doubt, it is declared that more than 1 community or group of Aboriginal peoples or Torres Strait Islander peoples may enter into treaty negotiations with the State.

## **Part 2                      First Nations Treaty Institute**

### **Division 1                      Establishment**

#### **9                      Establishment**

The First Nations Treaty Institute is established.

## **10 Legal status**

The Treaty Institute—

- (a) is a body corporate; and
- (b) may sue and be sued in its corporate name.

## **11 Treaty Institute does not represent the State**

The Treaty Institute does not represent the State.

## **12 Application of other Acts**

(1) The Treaty Institute is—

- (a) a statutory body under the *Financial Accountability Act 2009*; and
- (b) a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*.

*Note—*

The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way that Act affects the powers of the Treaty Institute.

(2) Also, the Treaty Institute is—

- (a) a unit of public administration under the *Crime and Corruption Act 2001*, section 20; and
- (b) a public authority under the *Information Privacy Act 2009*; and
- (c) a public authority under the *Ombudsman Act 2001*; and
- (d) a public sector entity under the *Public Interest Disclosure Act 2010*; and
- (e) a public sector entity under the *Public Sector Ethics Act 1994*; and
- (f) a public authority under the *Right to Information Act 2009*.

- (3) For applying subsection (2)(b), (c) and (f), a reference in the following provisions to the responsible Minister is a reference to the Minister administering this Act—
  - (a) the *Information Privacy Act 2009*, section 126;
  - (b) the *Ombudsman Act 2001*, section 50;
  - (c) the *Right to Information Act 2009*, section 113.
- (4) For applying subsection (2)(d) and (e), a reference in the following provisions to the chief executive officer is a reference to the Treaty Institute CEO—
  - (a) the *Public Interest Disclosure Act 2010*, sections 17, 28, 29 and 33;
  - (b) the *Public Sector Ethics Act 1994*, sections 15, 16 and 19 to 23.

## Division 2                      Functions and powers

### 13                      Functions

- (1) In relation to preparing for the State and Aboriginal peoples and Torres Strait Islander peoples to enter into and participate in treaty negotiations, the main functions of the Treaty Institute are as follows—
  - (a) to develop, in consultation with the State, a framework (the ***treaty-making framework***) to assist the State and Aboriginal peoples and Torres Strait Islander peoples to—
    - (i) assess the readiness of, and identify the requirements necessary for, Aboriginal peoples, Torres Strait Islander peoples and the State to enter into and participate in treaty negotiations; and
    - (ii) establish an understanding and recognition of the roles and responsibilities of each party to treaty negotiations; and

- (iii) establish processes for conducting treaty negotiations; and
    - (iv) identify and develop dispute resolution strategies to facilitate treaty negotiations; and
    - (v) consider the legal effect of a treaty;
  - (b) to consult with, support and empower Aboriginal peoples, Torres Strait Islander peoples and representative entities in relation to scoping, initiating and participating in treaty negotiations with the State;
  - (c) to develop and implement strategies to encourage support for treaty negotiations within the Queensland community generally;
  - (d) to support Aboriginal peoples and Torres Strait Islander peoples to record the impacts and effects of colonisation on their communities to inform their participation in treaty negotiations;
  - (e) to undertake and promote research to—
    - (i) inform the development of the treaty-making framework; and
    - (ii) support Aboriginal peoples and Torres Strait Islander peoples to participate in treaty negotiations;
  - (f) to provide advice, and make recommendations, to the Minister about the treaty-making framework;
  - (g) to provide advice to the Minister on, and assist in, implementing recommendations contained in the report prepared by the Inquiry and given to the Minister under section 88.
- (2) Also, the Treaty Institute has the functions given to it under this Act or another Act.
- (3) To remove any doubt, it is declared that it is not a function of the Treaty Institute to—
  - (a) be party to negotiations for a treaty; or

- (b) act on behalf of a party to negotiations for a treaty.

## **14 Powers**

- (1) The Treaty Institute has all the powers of an individual.
- (2) The Treaty Institute also has any other power given to it under this Act or another Act.

## **Division 3 Treaty Institute Council**

### **Subdivision 1 Establishment, functions and powers**

## **15 Establishment**

The Treaty Institute Council is established as the governing body of the Treaty Institute.

## **16 Functions**

The Treaty Institute Council has the following functions—

- (a) to ensure the Treaty Institute performs its functions and exercises its powers—
  - (i) in a proper, efficient and effective way; and
  - (ii) in accordance with the principles of this Act;
- (b) to develop strategies and policies for the Treaty Institute;
- (c) any other function given to the Treaty Institute Council under this Act or another Act.

## **17 Powers**

The Treaty Institute Council has the power to do anything necessary or convenient to be done in performing its functions.

## **18 Treaty Institute Council to act independently and in public interest**

- (1) In performing its functions and exercising its powers, the Treaty Institute Council must act independently and in the public interest, having particular regard to the interests of Aboriginal peoples and Torres Strait Islander peoples.
- (2) Without limiting subsection (1), the Treaty Institute Council is not subject to direction by any person, including the Minister, about how the Council performs its functions or exercises its powers.

## **Subdivision 2 Membership**

### **19 Treaty Institute Council members**

- (1) The Treaty Institute Council consists of 10 members.
- (2) A member must be appointed by the Governor in Council on the recommendation of the Minister.
- (3) The Minister may recommend a person for appointment as a member only if—
  - (a) the person is an Aboriginal person or a Torres Strait Islander person; and
  - (b) the Minister is satisfied the person is appropriately qualified.
- (4) In considering whether to recommend a person for appointment as a member, the Minister must have regard to the following matters—
  - (a) whether the membership of the Treaty Institute Council reflects—



- (i) the cultural diversity of Aboriginal peoples and Torres Strait Islander peoples; and
  - (ii) the gender diversity of Queensland;
  - (aa) any report about the person's criminal history given to the Minister under section 60;
  - (b) for an appointment 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.
- (5) A member is appointed under this Act and not the *Public Sector Act 2022*.

*Note—*

See also division 9, subdivision 2 in relation to vacancies in office and the suspension, removal and disqualification of members of the Treaty Institute Council.

## **20 Term of appointment**

- (1) A member of the Treaty Institute Council holds office for the term stated in the member's instrument of appointment.
- (2) For a member appointed before the inaugural period ends, the stated term must not end after the inaugural period ends.
- (3) For a member appointed after the inaugural period ends, the stated term must not be more than 3 years.
- (4) A member may be reappointed.

## **21 Conditions of appointment**

- (1) A member of the Treaty Institute Council is to be paid the remuneration and allowances decided by the Governor in Council.
- (2) A member holds office on the terms and conditions, not provided for by this Act, decided by the Governor in Council.

## **22 Chairpersons—general**

- (1) The Treaty Institute Council must appoint 2 members of the Council to be chairpersons of the Council.
- (2) In appointing a member of the Treaty Institute Council to be a chairperson, the Council must have regard to the following matters—
  - (a) the cultural diversity of Aboriginal peoples and Torres Strait Islander peoples;
  - (b) the gender diversity of Queensland.
- (3) A person holds office as a chairperson of the Treaty Institute Council for the term stated in the person's instrument of appointment as a chairperson.
- (4) The stated term must not end later than the person's term of appointment as a member of the Treaty Institute Council.

## **23 Administrative chairperson**

- (1) The Treaty Institute Council must appoint 1 chairperson of the Council to be the administrative chairperson of the Council.
- (2) A person holds office as the administrative chairperson of the Treaty Institute Council for the term stated in the person's instrument of appointment as administrative chairperson.
- (3) The stated term—
  - (a) must not be for a period that is more than one-half of the person's term of appointment as a chairperson of the Treaty Institute Council; and
  - (b) must not end later than the person's term of appointment as a chairperson of the Treaty Institute Council.
- (4) A person must not be reappointed as administrative chairperson for a consecutive term.

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## **24 Members to act independently and in public interest**

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.

## **Subdivision 3 Treaty Institute Council meetings**

### **25 Conduct of business**

Subject to this subdivision, the Treaty Institute Council may conduct its business, including its meetings, in the way it considers appropriate.

### **26 Meetings of Treaty Institute Council**

- (1) The administrative chairperson of the Treaty Institute Council may convene a meeting of the Council.
- (2) The administrative chairperson of the Treaty Institute Council must convene a meeting of the Council—
  - (a) at least 6 times each year; and
  - (b) if asked, in writing, by at least half of the members of the Council; and
  - (c) if given a notice under section 52(2).
- (3) However, if a notice given under section 52(2) is about the administrative chairperson of the Treaty Institute Council, the other chairperson must convene the meeting.
- (4) If a notice is given under section 52(2), the chairperson convening the meeting of the Treaty Institute Council under subsection (2)(c) or (3) must, as soon as practicable after receiving the notice, advise each member of the Council of the reason for the meeting.
- (5) The administrative chairperson of the Treaty Institute Council may convene a meeting of the Council if asked, in writing, by the Minister.

## **27 Presiding at meetings**

- (1) The administrative chairperson of the Treaty Institute Council is to preside at all meetings of the Council at which the administrative chairperson is present.
- (2) If the administrative chairperson of the Treaty Institute Council is not present at a meeting, the other chairperson of the Council, if present at the meeting, is to preside.
- (3) If neither chairperson of the Treaty Institute Council is present at a meeting, the member of the Council chosen by the members present is to preside.
- (4) Subsection (5) applies in relation to a meeting of the Treaty Institute Council convened under section 26(3).
- (5) Despite subsections (1) to (3)—
  - (a) the chairperson of the Treaty Institute Council who convened the meeting, if present at the meeting, is to preside; and
  - (b) if the chairperson of the Council who convened the meeting is not present at the meeting, the member, other than the administrative chairperson of the Council, chosen by the members present is to preside.

## **28 Quorum at meetings**

- (1) A quorum for a meeting of the Treaty Institute Council, other than a meeting convened under section 26(2)(c) or (3), is a majority of the members of the Council for the time being.
- (2) However, if at a meeting a member present at the meeting is required under section 30 not to be present during deliberations, or not to take part in any decision, of the Treaty Institute Council for a particular matter, the remaining members of the Council for the time being constitute a quorum for the meeting.

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## 29 Voting at meetings

- (1) This section applies in relation to a meeting of the Treaty Institute Council, other than a meeting convened under section 26(2)(c) or (3).
- (2) A question at the meeting is decided by a majority of the votes of the members of the Treaty Institute Council present at the meeting and able to vote on the question.
- (3) If the votes are equal, the member of the Treaty Institute Council presiding at the meeting also has a casting vote.

## 30 Disclosure of interests at meetings

- (1) This section applies to a member of the Treaty Institute Council if—
  - (a) a matter is being considered, or is about to be considered, at a meeting of the Council; and
  - (b) the member has a material personal interest in the matter; and
  - (c) the material personal interest could conflict with the proper performance of the member's duties in relation to the consideration of the matter.
- (2) For subsection (1), a member has a *material personal interest* in a matter if any of the following entities stands to gain a benefit or suffer a loss, either directly or indirectly, because of the outcome of the consideration of the matter—
  - (a) the member;
  - (b) the member's spouse;
  - (c) a parent, child, sibling or other relative of the member;
  - (d) an individual who is employed by the member;
  - (e) an employer, other than a government entity, of the member;
  - (f) an entity, other than a government entity, of which the member is an office holder.

[s 31]

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- (3) As soon as practicable after the relevant facts come to the knowledge of the member, the member must disclose the nature of the material personal interest to the other members at the meeting.
- (4) The member may further participate in the consideration of the matter only if a majority of the other members at the meeting agree to the member's further participation.
- (5) However, the member can not participate in any vote on the matter at the meeting.
- (6) A disclosure under subsection (3) must be recorded in the minutes of the meeting.
- (7) A failure to make a disclosure under subsection (3) does not, of itself, invalidate a decision of the Treaty Institute Council.

### **31 Minutes**

The Treaty Institute Council must keep minutes of its meetings.

## **Division 4 Advisory committees**

### **32 Treaty Institute Council must establish particular advisory committees**

The Treaty Institute Council must establish—

- (a) an advisory committee to consider, and provide advice to the Council about, matters relating to financial auditing and financial risk management in relation to the Treaty Institute; and
- (b) an advisory committee to consider, and provide advice to the Council about, matters relating to human rights and ethical and culturally appropriate research and investigation.

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**33 Treaty Institute Council may establish other advisory committees**

- (1) The Treaty Institute Council may establish an advisory committee to assist the Council in performing the Council's functions.
- (2) The Treaty Institute Council may establish an advisory committee under subsection (1) from time to time and as required by the Council.

**34 Requirements for establishing advisory committees**

- (1) In establishing an advisory committee, the Treaty Institute Council must decide the following matters—
  - (a) the functions of, or terms of reference for, the advisory committee;
  - (b) the number of persons to be appointed to the advisory committee as members and any appropriate qualifications for membership of the committee;
  - (c) the way, or frequency with which, an advisory committee must conduct its meetings or report to the Council;
  - (d) for an advisory committee established under section 33—the term of the committee.
- (2) For each advisory committee, the Treaty Institute Council must appoint a member of the Council as chairperson of the committee.
- (3) An advisory committee consists of—
  - (a) the chairperson of the committee; and
  - (b) the persons appointed by the Treaty Institute Council as members of the committee.
- (4) A member of an advisory committee, other than the chairperson of the committee—
  - (a) is entitled to the allowances stated in the member's instrument of appointment; and

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- (b) holds office on the terms and conditions, not provided for by this Act, stated in the member's instrument of appointment.

### **35 Advisory committee advice and recommendations**

- (1) An advisory committee may provide advice, and make recommendations, to the Treaty Institute Council in accordance with the committee's functions or terms of reference.
- (2) However, the Treaty Institute Council is not bound by any advice provided, or recommendation made, by an advisory committee.

### **36 Restriction on delegation to advisory committees**

The Treaty Institute Council must not delegate any of its functions to an advisory committee.

## **Division 5 Treaty Institute CEO**

### **37 Appointment**

- (1) The Treaty Institute Council must appoint a person as the chief executive officer of the Treaty Institute (the *Treaty Institute CEO*).
- (2) A person may be appointed as the Treaty Institute CEO only if—
  - (a) the person is an Aboriginal person or a Torres Strait Islander person; and
  - (b) the Treaty Institute Council is satisfied the person is appropriately qualified.
- (2A) In deciding whether to appoint a person as the Treaty Institute CEO, the Treaty Institute Council must consider any report about the person's criminal history given to the Council under section 60.



- (3) The Treaty Institute CEO—
  - (a) is appointed under this Act and not the *Public Sector Act 2022*; and
  - (b) is an employee of the Treaty Institute.

*Note—*

See also division 9, subdivision 2 in relation to vacancies in office and the removal and disqualification of the Treaty Institute CEO.

### **38 Responsibilities**

- (1) The Treaty Institute CEO is responsible for the day-to-day administration of the Treaty Institute, including, for example—
  - (a) ensuring the effective and efficient administration and operation of the Treaty Institute; and
  - (b) employing staff under section 47 and managing the staff; and
  - (c) engaging contractors of the Treaty Institute.
- (2) The Treaty Institute CEO also has the responsibilities given to the officer under this Act or another Act.
- (3) The Treaty Institute CEO must comply with the written policies and directions of the Treaty Institute Council in carrying out the responsibilities of the office.
- (4) The Treaty Institute CEO is accountable to the Treaty Institute Council.

### **39 Term of appointment**

- (1) The Treaty Institute CEO holds office for the term stated in the officer's instrument of appointment.
- (2) For the appointment of a person as the Treaty Institute CEO before the inaugural period ends—

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- (a) if the person is the first person appointed to the office—the stated term must not be more than 2 years;  
or
  - (b) otherwise—the stated term must not end after the inaugural period ends.
- (3) For the appointment of a person as the Treaty Institute CEO after the inaugural period ends, the stated term must not be more than 4 years.
- (4) A person may be reappointed as Treaty Institute CEO.

#### **40 Conditions of appointment**

- (1) The Treaty Institute CEO is to be paid the remuneration and allowances decided by the Treaty Institute Council.
- (2) The Treaty Institute CEO holds office on the terms and conditions, not provided for by this Act, decided by the Treaty Institute Council.

#### **41 Delegation**

- (1) The Treaty Institute CEO may delegate a function or responsibility of the office under this Act to an appropriately qualified Treaty Institute officer.

- (2) In this section—

*Treaty Institute officer* means—

- (a) the Treaty Institute secretary; or
- (b) a person employed under section 47.

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## Division 6                      Treaty Institute secretary

### 42            Appointment

- (1) The Treaty Institute Council must appoint a person as the secretary of the Treaty Institute (the *Treaty Institute secretary*).
- (2) A person may be appointed as the Treaty Institute secretary only if the Treaty Institute Council is satisfied the person is appropriately qualified.
- (2A) In deciding whether to appoint a person as the Treaty Institute secretary, the Treaty Institute Council must consider any report about the person's criminal history given to the Council under section 60.
- (3) The Treaty Institute secretary—
  - (a) is appointed under this Act and not the *Public Sector Act 2022*; and
  - (b) is an employee of the Treaty Institute.

*Note—*

See also division 9, subdivision 2 in relation to vacancies in office and the removal and disqualification of the Treaty Institute secretary.

### 43            Responsibilities

- (1) The Treaty Institute secretary has the following responsibilities—
  - (a) to advise the Treaty Institute on administration and governance matters to assist the Institute in the performance of its functions;
  - (b) to support the effective and efficient administration and operation of the Treaty Institute Council and the advisory committees;
  - (c) to ensure the implementation of, and compliance with, the written policies and directions of the Treaty Institute Council;

- (d) to ensure the Treaty Institute Council performs its functions and exercises its powers in accordance with the principles of transparency and accountability.
- (2) The Treaty Institute secretary also has the responsibilities given to the secretary under this Act or another Act.
- (3) The Treaty Institute secretary must comply with the written policies and directions of the Treaty Institute Council in carrying out the responsibilities of the office.
- (4) The Treaty Institute secretary is accountable to the Treaty Institute Council.

#### **44 Term of appointment**

- (1) The Treaty Institute secretary holds office for the term stated in the secretary's instrument of appointment.
- (2) For the appointment of a person as the Treaty Institute secretary before the inaugural period ends—
  - (a) if the person is the first person appointed to the office—the stated term must not be more than 2 years; or
  - (b) otherwise—the stated term must not end after the inaugural period ends.
- (3) For the appointment of a person as the Treaty Institute secretary after the inaugural period ends, the stated term must not be more than 4 years.
- (4) A person may be reappointed as Treaty Institute secretary.

#### **45 Conditions of appointment**

- (1) The Treaty Institute secretary is to be paid the remuneration and allowances decided by the Treaty Institute Council.
- (2) The Treaty Institute secretary holds office on the terms and conditions, not provided for by this Act, decided by the Treaty Institute Council.

## 46 Delegation

The Treaty Institute secretary may delegate a function or responsibility of the office under this Act to an appropriately qualified person employed under section 47.

## Division 7 Other staff

### 47 Treaty Institute staff

- (1) The Treaty Institute may employ other staff it considers appropriate for performing its functions.
- (2) The staff are employed under this Act and not the *Public Sector Act 2022*.
- (3) Subject to this Act and any relevant industrial instrument within the meaning of the *Industrial Relations Act 2016*, the conditions of service of the staff are the conditions decided by the Treaty Institute.

## Division 8 Reports

### 48 Inaugural report

- (1) The Treaty Institute Council must, within 6 months before the day the inaugural period ends, give the Minister a report (the *inaugural report*) about—
  - (a) the performance of the functions of the Treaty Institute and the Treaty Institute Council; and
  - (b) the process for appointing a member to the Treaty Institute Council.
- (2) Without limiting subsection (1)(b), the inaugural report may include advice, or make recommendations, to the Minister about the following matters—
  - (a) an alternative process for appointing members to the Treaty Institute Council;

- (b) ways of ensuring the process for appointing members to the Treaty Institute Council—
  - (i) best reflects the diversity of Aboriginal peoples and Torres Strait Islander peoples; and
  - (ii) incorporates consultation with Aboriginal peoples and Torres Strait Islander peoples.
- (3) The Minister must table a copy of the inaugural report in the Legislative Assembly within 14 sitting days after receiving the report.
- (4) The Treaty Institute Council must ensure that information included in the inaugural report does not disclose confidential information without the consent of the person to whom the information relates.

## **49 Annual reports**

- (1) This section applies in relation to an annual report prepared by the Treaty Institute under the *Financial Accountability Act 2009*, section 63 for a financial year.
- (2) The annual report must include the following—
  - (a) an assessment of the Treaty Institute’s financial position and performance for the financial year;
  - (b) information about whether the Treaty Institute has achieved the objectives stated in the Institute’s strategic plan under the *Financial Accountability Act 2009*.
- (3) The Treaty Institute Council must approve the annual report before the report is given to the Minister.
- (4) The Treaty Institute Council must ensure that information included in the annual report does not disclose confidential information without the consent of the person to whom the information relates.

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## **Division 9            Other matters**

### **Subdivision 1        Preliminary**

#### **50        Definitions for division**

In this division—

*relevant official* means—

- (a) for a member of the Treaty Institute Council—the Minister; or
- (b) for a senior executive officer—the Treaty Institute Council.

*senior executive officer* means—

- (a) the Treaty Institute CEO; or
- (b) the Treaty Institute secretary.

### **Subdivision 2        Provisions relating to particular office holders**

#### **51        Vacancy in office**

The office of a member of the Treaty Institute Council or a senior executive officer becomes vacant if—

- (a) the member or officer completes the member's or officer's term of office and is not reappointed; or
- (b) the member or officer resigns from office by signed notice given to the relevant official for the office; or
- (c) the member or officer is removed from office under section 53 or 54; or
- (d) the member or officer becomes disqualified from continuing in the office under section 55; or

- (e) for a member of the Treaty Institute Council—the member is absent from 3 consecutive meetings of the Council—
  - (i) without the Council’s permission; and
  - (ii) without reasonable excuse.

## 52 Suspension of Treaty Institute Council members

- (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.
- (2) The first member may give each chairperson of the Treaty Institute Council and the other member a notice—
  - (a) asking that a meeting of the Council be convened under section 26; and
  - (b) stating why the first member considers the other member should be suspended.
- (3) At the meeting convened under section 26 in response to the notice, the Treaty Institute Council may decide by special resolution to suspend the other member from office.

*Note—*

For which chairperson must convene a meeting in relation to a notice given under subsection (2) and which member must preside at the meeting, see sections 26 and 27.

- (4) If the Treaty Institute Council decides to suspend the other member from office, the Council must give the member a notice stating—
  - (a) the reason the member is suspended; and



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- (b) the period, of not more than 60 days, for which the member is suspended.
  - (5) The suspension takes effect on the day the notice is given and continues in effect until the earlier of the following—
    - (a) the end of the period stated in the notice;
    - (b) if, at a meeting of the Treaty Institute Council, the Council decides by special resolution to revoke the suspension because the reason for the suspension no longer exists—the day the decision is made.
  - (6) The Treaty Institute Council must, as soon as practicable after deciding to suspend a member or to revoke a suspension, give the Minister notice of the suspension or revocation.
  - (7) In this section—

*special resolution* means a resolution that is passed by a two-thirds majority of the members of the Treaty Institute Council for the time being.

## 53 Removal of Treaty Institute Council members

- (1) 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—
  - (a) has engaged in—
    - (i) inappropriate or improper conduct in an official capacity; or
    - (ii) inappropriate or improper conduct in a private capacity that reflects seriously and adversely on the office; or
  - (b) is incapable of performing the member's functions; or
  - (c) has neglected the member's duties or performed the member's functions incompetently.
- (2) In considering whether to make a recommendation under subsection (1), the Minister may consult with the Treaty Institute Council.

- (3) This section does not limit the Governor in Council's powers under the *Acts Interpretation Act 1954*, section 25.

#### **54 Removal of senior executive officers**

- (1) The Treaty Institute Council may remove a senior executive officer from office if satisfied the officer—
- (a) has engaged in—
    - (i) inappropriate or improper conduct in an official capacity; or
    - (ii) inappropriate or improper conduct in a private capacity that reflects seriously and adversely on the office; or
  - (b) is incapable of performing the functions or responsibilities of the office; or
  - (c) has neglected the officer's duties or performed the officer's functions incompetently.
- (2) This section does not limit the powers of the Treaty Institute Council under the *Acts Interpretation Act 1954*, section 25.

#### **55 Disqualification of Treaty Institute Council members and senior executive officers**

- (1) A person is disqualified from becoming or continuing as a member of the Treaty Institute Council or a senior executive officer if—
- (a) the person is an insolvent under administration under the Corporations Act, section 9; or
  - (b) the person is disqualified from managing corporations because of the Corporations Act, part 2D.6; or
  - (c) the person is disqualified from managing an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth); or

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(e) the relevant official for the office asks for the person's consent to make a request under section 60 in relation to the person and the person does not consent.

(2) If an event mentioned in subsection (1)(a) to (c) happens during the term of the person's appointment, the person must, unless the person has a reasonable excuse, immediately give notice of the insolvency or disqualification to the relevant official for the office.

Maximum penalty—100 penalty units.

(2A) A person is disqualified from continuing as a member of the Treaty Institute Council or a senior executive officer if, during the term of the person's appointment, the person is convicted of an indictable offence.

*Note—*

For the requirement to give notice of a change in a person's criminal history, see section 61.

(3) A person is disqualified from becoming or continuing as a senior executive officer if the person contravenes section 56 or 57.

## **56 Other paid employment prohibited—senior executive officers**

A person who is appointed as a senior executive officer must not, without the prior written approval of the Treaty Institute Council—

- (a) engage in paid employment outside the responsibilities of the person's office; or
- (b) actively take part in the activities of a business, or in the management of a corporation carrying on a business, outside the responsibilities of the person's office.

## **57 Conflicts of interest—senior executive officers**

If a person who is appointed as a senior executive officer has an interest that conflicts, or may conflict, with the discharge of the responsibilities of the person's office, the person—

- (a) must disclose the nature of the interest and conflict to the Treaty Institute Council as soon as practicable after the relevant facts come to the person's knowledge; and
- (b) must not take action or further action concerning a matter that is, or may be, affected by the conflict unless authorised by the Treaty Institute Council.

## **58 Preservation of rights**

- (1) This section applies if a public service officer is appointed as—
  - (a) a member of the Treaty Institute Council; or
  - (b) a senior executive officer; or
  - (c) a member of staff of the Treaty Institute.
- (2) The person keeps all rights accrued or accruing to the person as a public service officer as if service as a member of the Treaty Institute Council, a senior executive officer or a staff member of the Treaty Institute were a continuation of service as a public service officer.
- (3) At the end of the person's term of office as a member of the Treaty Institute Council, a senior executive officer or a staff member of the Treaty Institute, or on resignation from the office, the person's service in the office is taken to be service of a like nature in the public service for deciding the person's rights as a public service officer.

## **59 Protection from civil liability**

- (1) The following persons do not incur civil liability for an act done, or omission made, honestly and without negligence under this part—

- (a) a member of the Treaty Institute Council;
  - (b) a senior executive officer;
  - (c) a member of staff of the Treaty Institute.
- (2) If subsection (1) prevents a civil liability attaching to a person, the liability attaches instead to the Treaty Institute.
- (3) This section does not affect the liability of a person to disciplinary action under the conditions of the person's appointment or employment.

### **Subdivision 3 Criminal history**

#### **60 Criminal history reports**

- (1) This section applies if a relevant official is making any of the following decisions—
- (a) whether to recommend a person for appointment as a member of the Treaty Institute Council;
  - (b) whether to appoint a person as a senior executive officer;
  - (c) whether a person is disqualified from continuing as a member of the Treaty Institute Council or a senior executive officer.
- (1A) The relevant official may ask the commissioner of the police service for—
- (a) a written report about the criminal history of the person; and
  - (b) a brief description of the circumstances of a conviction mentioned in the criminal history.
- (2) However, the relevant official may make the request only if the person has given the relevant official written consent for the request.
- (3) The commissioner of the police service must comply with the request.

- (4) However, the duty to comply under subsection (3) applies only to information in the possession of the commissioner of the police service or to which the commissioner of the police service has access.

## **61 Requirement to disclose changes in criminal history**

- (1) This section applies if a person who is a member of the Treaty Institute Council or a senior executive officer is charged with or convicted of an indictable offence during the term of the person's appointment.
- (2) The person must, immediately after the person is charged or convicted, give notice of the charge or conviction to the relevant official for the person's office, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (3) The notice must include the following information—
- (a) the existence of the charge or conviction;
  - (b) for a charge—
    - (i) details adequate to identify the alleged offence; and
    - (ii) when the offence was alleged to have been committed;
  - (c) for a conviction—
    - (i) details adequate to identify the offence; and
    - (ii) when the offence was committed; and
    - (iii) the sentence imposed on the person.

## **62 Confidentiality of criminal history information**

- (1) This section applies to a person who—
- (a) is or has been—
    - (i) the Minister; or

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- (ii) a member of the Treaty Institute Council; or
  - (iii) a senior executive officer; or
  - (iv) a member of staff or a contractor of the Treaty Institute; or
  - (v) a public service employee performing functions under or relating to the administration of this part; and
- (b) in that capacity, has acquired or has access to criminal history information.
- (2) The person must not disclose the criminal history information to anyone else, or use the information, other than under this section.

Maximum penalty—100 penalty units.

- (3) The person may disclose or use the criminal history information—
- (a) to the extent the disclosure or use is—
    - (i) necessary to perform the person’s functions under or relating to this Act; or
    - (ii) otherwise required or permitted under this Act or another law; or
  - (b) with the consent of the person to whom the criminal history information relates.
- (4) A person who possesses a report given under section 60 or a notice given under section 61 must ensure the report or notice is destroyed as soon as practicable after it is no longer needed for the purpose for which it was given.
- (5) Subsection (4) applies despite the *Public Records Act 2002*.

- (6) In this section—

***criminal history information*** means information contained in—

- (a) a report given under section 60; or
- (b) a notice given under section 61.

*disclose* includes give access to.

## **Subdivision 4      Disclosure of confidential information**

### **63      Confidentiality of information**

- (1) This section applies to a person who—
  - (a) is or has been—
    - (i) the Minister; or
    - (ii) a member of the Treaty Institute Council; or
    - (iii) a senior executive officer; or
    - (iv) a member of staff or a contractor of the Treaty Institute; or
    - (v) a public service employee performing functions under or relating to the administration of this part; and
  - (b) in that capacity, has acquired or has access to confidential information.
- (2) The person must not disclose the confidential information to anyone else, or use the information, other than under this section.  
Maximum penalty—100 penalty units.
- (3) The person may disclose or use the confidential information—
  - (a) to the extent the disclosure or use is—
    - (i) necessary to perform the person’s functions under or relating to this Act; or
    - (ii) otherwise required or permitted under this Act or another law; or
  - (b) with the consent of the person to whom the information relates; or



- (c) to the extent the disclosure or use—
    - (i) does not identify the person to whom the information relates; and
    - (ii) does not allow the identity of the person to be reasonably ascertained; or
  - (d) in compliance with a lawful process requiring production of documents to, or giving evidence before, a court or tribunal.
- (4) In this section—
- disclose* includes give access to.
- information* includes a document.

## **Part 3**                      **Truth-telling and Healing Inquiry**

### **Division 1**                **Establishment, terms of reference and functions**

#### **64**        **Establishment and term**

- (1) The Minister must, within 3 months after the commencement, establish a board of inquiry to be called the Truth-telling and Healing Inquiry.
- (2) The Inquiry must be established for a term of not more than 3 years.
- (3) However, the Minister may extend the term of the Inquiry—
  - (a) if the Inquiry gives the Minister a notice—
    - (i) asking the Minister to extend the term; and
    - (ii) stating the proposed period of the extension; and
    - (iii) stating the reasons for the extension; or
  - (b) on the Minister’s own initiative.

- (4) If the Minister extends the term of the Inquiry, the chief executive must publish notice of the extension on the department's website.

## **65 Terms of reference**

- (1) The Minister must, within 1 month after the commencement, prepare the terms of reference for the Inquiry and give the terms of reference to the chief executive.
- (2) The Minister must give the terms of reference to the Inquiry as soon as practicable after the Inquiry is established.
- (3) In preparing the terms of reference, the Minister may consult with any person the Minister considers has skills, knowledge or experience relevant to the functions of the Inquiry.
- (4) The terms of reference must include the matters, not otherwise provided for by this Act, the Inquiry must have regard to in performing its functions.
- (5) As soon as practicable after receiving the terms of reference, the chief executive must publish the terms of reference on the department's website.

## **66 Functions**

The Inquiry has the following functions—

- (a) to conduct inquiries into and document the individual, familial, cultural and societal impacts and effects of colonisation on Aboriginal peoples and Torres Strait Islander peoples by—
  - (i) holding truth-telling sessions; and
  - (ii) holding truth-telling hearings; and
  - (iii) inviting persons to give documents and other things to the Inquiry;
- (b) to conduct research into, and promote community awareness and understanding of, the impacts and effects of colonisation on—

- (i) Aboriginal peoples, Aboriginal law and Aboriginal tradition; and
  - (ii) Torres Strait Islander peoples, Torres Strait Islander law and Ailan Kastom; and
  - (iii) the general public's shared understanding of the history of Queensland;
- (c) to provide advice and make recommendations to the Minister in accordance with the Inquiry's terms of reference;
- (d) to undertake any other function stated in the Inquiry's terms of reference.

## **Division 2                      Membership**

### **67            Inquiry members**

- (1) The Inquiry consists of 5 members.
- (2) A member must be appointed by the Governor in Council on the recommendation of the Minister.
- (3) In recommending a person to the Governor in Council for appointment as a member, the Minister must ensure that—
  - (a) the membership of the Inquiry reflects the gender diversity of Queensland; and
  - (b) at least 1 member is an Aboriginal person; and
  - (c) at least 1 member is a Torres Strait Islander person; and
  - (d) the majority of the members are Aboriginal persons or Torres Strait Islander persons; and
  - (e) at least 1 member is a lawyer—
    - (i) of at least 5 years standing; and
    - (ii) who the Minister considers has experience relevant to the functions of the Inquiry.

- (4) Also, the Minister may recommend a person to the Governor in Council for appointment as a member only if the Minister is satisfied the person is suitable for appointment due to the person's experience and standing in the Aboriginal community or the Torres Strait Islander community.
- (5) A member is appointed under this Act and not the *Public Sector Act 2022*.

## **68 Term of appointment**

- (1) A member of the Inquiry holds office for the term stated in the member's instrument of appointment.
- (2) The stated term must not end after the term of the Inquiry ends.
- (3) A member may be reappointed.

## **69 Conditions of appointment**

- (1) A member of the Inquiry is to be paid the remuneration and allowances decided by the Governor in Council.
- (2) A member holds office on the terms and conditions, not provided for by this Act, decided by the Governor in Council.

## **70 Chairperson**

- (1) The Minister must appoint a member of the Inquiry who is an Aboriginal person or a Torres Strait Islander person to be chairperson of the Inquiry.
- (2) A person holds office as chairperson of the Inquiry for the term stated in the person's instrument of appointment as chairperson.
- (3) The stated term must not end later than the person's term of appointment as a member of the Inquiry.
- (4) The chairperson of the Inquiry is responsible for the day-to-day management of the Inquiry's functions, including

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ensuring the effective and efficient administration and operation of the Inquiry.

- (5) The chairperson of the Inquiry may delegate a function or responsibility of the office to another member of the Inquiry.

## **71 Members to act independently and in public interest**

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.

## **Division 3 Conduct of inquiries**

### **Subdivision 1 General**

#### **72 Procedures**

- (1) In performing its functions under section 66(a), the Inquiry—
- (a) must observe natural justice; and
  - (b) is not bound by the rules of evidence; and
  - (c) must conduct a truth-telling session or truth-telling hearing in a culturally appropriate manner having regard to the following—
    - (i) Aboriginal law and Aboriginal tradition;
    - (ii) Torres Strait Islander law and Ailan Kastom; and
  - (d) must 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; and
  - (e) may—

- (i) inform itself in any way it considers appropriate; and
  - (ii) decide the procedures to be followed.
- (2) The Inquiry—
  - (a) must make guidelines about the following matters—
    - (i) 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;
    - (ii) 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;
    - (iii) 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; and
  - (b) may make guidelines about the following matters—
    - (i) procedures for attendance at a truth-telling session or truth-telling hearing;
    - (ii) procedures for giving documents or other things to the Inquiry, including procedures for making submissions;
    - (iii) procedures for collecting and sharing documents or other things given to the Inquiry;
    - (iv) any other matter the Inquiry considers relevant to the performance of its functions.
- (3) The guidelines must be published on the Inquiry's website.

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**73 How Inquiry may perform its functions**

- (1) In performing its functions, other than conducting a truth-telling hearing, the Inquiry may be represented by 1 or more members of the Inquiry.
- (2) In conducting a truth-telling hearing, the Inquiry must be constituted by all of the members of the Inquiry.
- (3) Any document or other thing given to a member of the Inquiry as a representative of the Inquiry is taken to be given to the Inquiry.

**74 Truth-telling sessions and truth-telling hearings to be held in public except in particular circumstances**

- (1) The Inquiry must hold a truth-telling session or truth-telling hearing in public.
- (2) However, the Inquiry may, if asked by a person or on its own initiative, hold a truth-telling session or truth-telling hearing, or part of a truth-telling session or truth-telling hearing, in private if satisfied it is appropriate to do so.
- (3) The Inquiry may give a direction about the persons who may attend a truth-telling session or truth-telling hearing, or part of a truth-telling session or truth-telling hearing, held in private.

**75 Record of proceedings to be kept**

- (1) The Inquiry must keep a record of each truth-telling session or truth-telling hearing it holds.
- (2) However, the Inquiry must not record a document or other thing given by a person during a truth-telling session if the person asks the Inquiry not to record the document or thing.
- (3) Subsection (2) does not apply if the document or other thing is given by a person in the person's capacity as the chief executive officer of a government entity.

## **76 Changes to membership of Inquiry**

The holding of a truth-telling session or truth-telling hearing by the Inquiry is not affected by a change in its membership.

## **77 Protection of members and persons appearing before Inquiry**

- (1) A member of the Inquiry has, in performing the member's functions at a truth-telling session or truth-telling hearing, the same immunity and protection as a Supreme Court judge performing a judicial function.
- (2) A lawyer or another person who appears for someone else at a truth-telling session or truth-telling hearing has the same immunity and protection as a barrister appearing for a party in a proceeding in the Supreme Court.
- (3) A person appearing at a truth-telling session or truth-telling hearing has the same protection and immunity as a witness in a proceeding in the Supreme Court.

## **Subdivision 2 Truth-telling sessions**

### **78 Inquiry may hold truth-telling sessions**

- (1) The Inquiry may hold a truth-telling session.
- (2) The Inquiry may invite a person to attend a truth-telling session to make an oral submission about—
  - (a) the experiences of a person or peoples relating to the history of Aboriginal peoples or Torres Strait Islander peoples; or
  - (b) another matter the Inquiry considers will assist the Inquiry in the performance of its functions.
- (3) A person who is invited to attend a truth-telling session is not required to attend the session or make a submission to the Inquiry.



*Note—*

See also section 85 for the giving of an attendance notice to the chief executive officer of a government entity who declines an invitation to attend a truth-telling session.

- (4) If the chairperson of the Inquiry is present at a truth-telling session, the chairperson must preside at the session.
- (5) If the chairperson of the Inquiry is not present at a truth-telling session, the member of the Inquiry chosen by the members present is to preside at the session.

### **Subdivision 3 Giving documents and other things to Inquiry**

#### **79 When government entities hold documents and other things**

For this subdivision, a document or other thing is held by a government entity if—

- (a) the document or thing is in the possession, or under the control, of the entity, whether or not the document or thing was brought into existence or received by the entity; or
- (b) the entity is entitled to access the document or thing; or
- (c) the document or thing is in the possession, or under the control, of an officer of the entity in the officer's official capacity.

#### **80 Inviting entities to give documents and other things to Inquiry**

- (1) The Inquiry may, by notice given to an entity, invite the entity to—
  - (a) give to the Inquiry a document or other thing the entity considers may assist the Inquiry in performing its functions; or

- (b) make a written submission to the Inquiry about a matter the entity considers may assist the Inquiry in performing its functions.
- (2) The notice may state a period for giving the document or thing or making the submission.
- (3) If the notice is given to a person in the person's capacity as the chief executive officer of a government entity, the notice must—
  - (a) for a notice given under subsection (1)(a)—describe the document or thing in sufficient detail to enable the person to identify whether the government entity holds the document or thing and is able to give it to the Inquiry; or
  - (b) for a notice given under subsection (1)(b)—include sufficient details about the matters to be included in the submission to enable the person to identify whether the person is able to make the submission.
- (4) The entity may give the document or thing, or make the submission, subject to a condition the entity considers appropriate.

*Example—*

An entity may give a document subject to a condition that the Inquiry must not record particular names or events stated in the document.

- (5) The Inquiry must comply with the condition.
- (6) However, subsections (4) and (5) do not apply if the document or thing is given, or the submission is made, by a person in the person's capacity as the chief executive officer of a government entity.

## **81 Giving production notices**

- (1) This section applies if a person is given a notice under section 80 in the person's capacity as the chief executive officer of a government entity and either of the following applies—

- (a) the person has not given a document or thing, or made a submission, in accordance with the notice;
  - (b) the person has given a document or thing, or made a submission, in accordance with the notice but the Inquiry considers the government entity holds another document or thing that will assist the Inquiry in performing its functions.
- (2) The Inquiry may, by notice given to the person (a ***production notice***), require the person to do any of the following within a stated period—
- (a) to give to the Inquiry a document or other thing held by the government entity that the Inquiry considers will assist the Inquiry in performing its functions;
  - (b) to make a written submission to the Inquiry about a matter the Inquiry considers will assist the Inquiry in performing its functions.
- (3) The production notice must—
- (a) for a notice given under subsection (2)(a)—describe the document or thing in sufficient detail to enable the person to identify whether the government entity holds the document or thing and is able to give it to the Inquiry; or
  - (b) for a notice given under subsection (2)(b)—include sufficient details about the matters to be included in the submission to enable the person to identify whether the person is able to make the submission.
- (4) Subject to section 83, the person must comply with the production notice.
- (5) The person must, within a reasonable time after receiving the production notice, give the Inquiry a notice stating—
- (a) for a production notice given under subsection (2)(a)—whether the government entity holds the document or thing described in the production notice and, if so—

- (i) whether the person intends to give the document or thing to the Inquiry; and
  - (ii) if the person does not intend to give the document or thing—the reasons why the person does not intend to give the document or thing; or
- (b) for a production notice given under subsection (2)(b)—
- (i) whether the person intends to make the submission requested in the production notice; and
  - (ii) if the person does not intend to make the submission—the reasons why the person does not intend to make the submission.

## **82 Principles for dealing with production notices**

A person who is given a production notice must have regard to the following principles in dealing with the notice—

- (a) the principles stated in section 6;
- (b) wherever possible, access to government information is a fundamental principle of transparent and accountable government.

## **83 Grounds for non-compliance with production notices**

A person who is given a production notice is not required to comply with the notice if—

- (a) for a production notice given under section 81(2)(a)—
  - (i) the government entity does not hold the document or thing; or
  - (ii) the document or thing is, or contains, personal information and the person is not able to give the document or thing without disclosing the personal information; or
  - (iii) the document or thing is subject to legal professional privilege; or

- (iv) the document or thing is subject to public interest immunity; or
- (v) disclosing the document or thing may disclose commercial-in-confidence information; or
- (vi) disclosing the document or thing could reasonably be expected to prejudice—
  - (A) the investigation of an offence or a contravention, or possible contravention, of a law; or
  - (B) an investigation under the *Coroners Act 2003*; or
  - (C) the conduct of a civil or criminal proceeding before a court or tribunal; or
- (vii) disclosing the document or thing would, but for section 81, be an offence under another Act or law; or
- (b) for a production notice given under section 81(2)(b)—
  - (i) making the submission would, but for section 81, be an offence under another Act or law; or
  - (ii) in making the submission, the person would disclose a document or thing that is not required to be given under paragraph (a)(ii) to (vi).

## Subdivision 4 Truth-telling hearings

### 84 Inquiry may hold truth-telling hearings

- (1) The Inquiry may hold a truth-telling hearing.
- (2) The chairperson of the Inquiry is to preside at a truth-telling hearing.

## 85 Giving attendance notices

- (1) This section applies in relation to a person who is invited under section 78(2) to attend a truth-telling session in the person's capacity as the chief executive officer of a government entity if—
  - (a) the person does not attend the session; or
  - (b) the person attends the session but the Inquiry considers that the making of a further oral submission by the person will assist the Inquiry in the performance of its functions.
- (2) Also, this section applies in relation to a person who is given a production notice if—
  - (a) the person has not given the Inquiry a notice under section 81(5); or
  - (b) the person has given the Inquiry a notice under section 81(5) stating that the person does not intend to give a document or thing, or make a written submission, requested in the production notice.
- (3) The Inquiry may, by notice given to the person (an *attendance notice*), require the person to attend a truth-telling hearing at a stated time and place to—
  - (a) if subsection (2)(b) applies—explain to the Inquiry why the person does not intend to give the document or thing or make the submission; or
  - (b) make an oral submission to the Inquiry about a matter the Inquiry considers will assist the Inquiry in the performance of its functions.
- (4) If the attendance notice is given under subsection (3)(b), the notice must provide details of the matters to be included in the submission.

## 86 Offences

- (1) If a person is given an attendance notice, the person must not fail, without reasonable excuse, to—

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- (a) attend the truth-telling hearing as required by the notice; or
  - (b) continue to attend the truth-telling hearing as required by the chairperson of the Inquiry until excused from further attendance.

Maximum penalty—100 penalty units.

- (2) If a person attends a truth-telling hearing in accordance with an attendance notice, the person—
  - (a) must take an oath, or make an affirmation, when required by the chairperson of the Inquiry; and
  - (b) must not fail, without reasonable excuse, to answer a question the person is required to answer by a member of the Inquiry; and
  - (c) must not fail, without reasonable excuse, to make an oral submission as required by the attendance notice.

Maximum penalty—100 penalty units.

- (3) It is a reasonable excuse for a person to refuse to answer a question, or make an oral submission, on the ground that answering the question, or making the submission, might tend to incriminate the person or make the person liable to a penalty.

## **Division 4                      Reporting requirements**

### **87                      Requirement to keep Minister informed**

The Inquiry must keep the Minister reasonably informed about the functions performed and activities carried out by the Inquiry.

### **87A                      Report to Minister about particular provisions**

- (1) The Inquiry must, within 1 year after the Inquiry is established, give the Minister a written report on the operation and efficacy of division 3, subdivisions 3 and 4.

- (2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.
- (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.

## **88 Report to Minister on findings**

- (1) The Inquiry must, before the term of the Inquiry ends, give the Minister a written report on the Inquiry's findings.
- (2) The report may include any recommendations the Inquiry considers appropriate and other relevant matters.
- (3) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.
- (4) 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.

## **Division 5 Other matters**

### **89 Protection from civil liability**

- (1) A member of the Inquiry does not incur civil liability for an act done, or omission made, honestly and without negligence under this part.
- (2) If subsection (1) prevents a civil liability attaching to a member of the Inquiry, the liability attaches instead to the State.
- (3) This section does not affect the liability of a person to disciplinary action under the conditions of the person's appointment.



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## **90 Staffing arrangements and administrative support**

- (1) The chief executive must, as soon as practicable after the Inquiry is established, enter into arrangements with the chairperson of the Inquiry in relation to the following—
  - (a) the services of officers or employees of the department to be made available to the Inquiry;
  - (b) other resources or facilities of the department to be made available to the Inquiry.
- (2) An officer or employee whose services are made available under subsection (1)—
  - (a) continues to be an officer or employee of the department; and
  - (b) continues to be employed or otherwise engaged by the department on the same terms and conditions applying to the officer or employee before the services were made available.

## **91 Confidentiality of information**

- (1) This section applies to a person who—
  - (a) is or has been—
    - (i) the Minister; or
    - (ii) a member of the Inquiry; or
    - (iii) a public service employee performing functions under or relating to the administration of this part; and
  - (b) in that capacity, has acquired or has access to confidential information.
- (2) The person must not disclose the confidential information to anyone else, or use the information, other than under this section.

Maximum penalty—100 penalty units.

- (3) The person may disclose or use the confidential information—
- (a) to the extent the disclosure or use is—
    - (i) necessary to perform the person’s functions under or relating to this Act; or
    - (ii) otherwise required or permitted under this Act or another law; or
  - (b) with the consent of the person to whom the information relates; or
  - (c) to the extent the disclosure or use—
    - (i) does not identify the person to whom the information relates; or
    - (ii) does not allow the identity of the person to be reasonably ascertained; or
  - (d) in compliance with a lawful process requiring production of documents to, or giving evidence before, a court or tribunal.
- (4) In this section—
- disclose* includes give access to.
- information* includes a document.

## 92 False or misleading information

- (1) A person must not give information to the Inquiry under this part that the person knows is false or misleading in a material particular.
- Maximum penalty—100 penalty units.
- (2) Subsection (1) does not apply to a person if the person, when giving the information in a document—
- (a) tells the Inquiry, to the best of the person’s ability, how the document is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

**93 Disapplication of Recording of Evidence Act 1962**

The *Recording of Evidence Act 1962* does not apply in relation to a truth-telling session or truth-telling hearing held by the Inquiry.

**Part 4 Miscellaneous**

**94 Review of Act**

- (1) The Minister must ensure a review of the operation and efficacy of this Act is conducted within 5 years after the commencement.
- (2) The review must be conducted by an appropriately qualified entity appointed by the Minister.
- (3) Before appointing an entity to conduct the review, the Minister must consult with the Treaty Institute.
- (4) 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.

**95 Regulation-making power**

The Governor in Council may make regulations under this Act.

## Schedule 1 Dictionary

### section 7

***Aboriginal law*** means the body of culturally embedded principles and practices which governs a community or group of Aboriginal peoples.

***Aboriginal tradition***—

- (a) means the body of customs, traditions, observances and beliefs of Aboriginal peoples generally or of a particular community or group of Aboriginal peoples; and
- (b) includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships.

***administrative chairperson***, of the Treaty Institute Council, means the person appointed as the administrative chairperson of the Council under section 23.

***advisory committee*** means an advisory committee established under section 32 or 33.

***Ailan Kastom***—

- (a) means the body of customs, traditions, observances and beliefs of Torres Strait Islander peoples generally or of a particular community or group of Torres Strait Islander peoples; and
- (b) includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships.

***attendance notice*** see section 85(3).

***chief executive officer***, of a government entity, means—

- (a) if the entity is a department—the chief executive of the department; or
- (b) otherwise—the office holder, however described, of the entity who is responsible for the day-to-day

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management of the entity or the entity's affairs, whether or not the individual is subject to the direction of, or reports to, a governing body of the entity.

***confidential information***—

- (a) means personal information; but
- (b) does not include information that is publicly available.

***conviction*** means a finding of guilt or acceptance of a plea of guilty by a court, regardless of whether a conviction is recorded.

***criminal history***, of a person, means the person's criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than a spent conviction.

***function*** includes a power.

***government entity*** means—

- (a) a government entity within the meaning of the *Public Sector Act 2022*, section 276; or
- (b) the Queensland Police Service.

***inaugural period*** means the period ending 2 years after the day section 9 commences.

***inaugural report*** see section 48(1).

***Inquiry*** means the board of inquiry, called the Truth-telling and Healing Inquiry, established under section 64.

***notice*** means a written notice.

***personal information*** see the *Information Privacy Act 2009*, section 12.

***production notice*** see section 81(2).

***relevant official***, for part 2, division 9, see section 50.

***representative entity*** means an entity—

- (a) established under—
  - (i) another Act; or

- (ii) a law of the Commonwealth or another State; or
  - (iii) Aboriginal law, Aboriginal tradition, Torres Strait Islander law or Ailan Kastom; and
- (b) that was established for, or performs the function of, representing, preserving or advocating for the rights of Aboriginal peoples or Torres Strait Islander peoples or particular Aboriginal peoples or Torres Strait Islander peoples.

*senior executive officer*, for part 2, division 9, see section 50.

*spent conviction* means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived under section 11 of that Act.

*Torres Strait Islander law* means the body of culturally embedded principles and practices which governs a community or group of Torres Strait Islander peoples.

*Treaty Institute* means the First Nations Treaty Institute established under section 9.

*Treaty Institute CEO* see section 37(1).

*Treaty Institute Council* means the Treaty Institute Council established under section 15.

*Treaty Institute secretary* see section 42(1).

*treaty-making framework* see section 13(1)(a).

*treaty negotiations* see section 8(1).

*truth-telling hearing* means a truth-telling hearing held by the Inquiry under section 84(1).

*truth-telling session* means a truth-telling session held by the Inquiry under section 78(1).