Path to Treaty Bill 2023

Explanatory Notes

Short title

The short title of the Bill is the Path to Treaty Bill 2023.

Policy objectives and the reasons for them

Path to Treaty Bill 2023

The Path to Treaty is a shared journey between the Queensland Government, Aboriginal and Torres Strait Islander peoples and non-Indigenous Queenslanders – a key reform with the ultimate goal of negotiating a treaty or treaties that will reframe and strengthen the relationship between Queensland's First Nations and the wider community.

The Path to Treaty recognises the process of colonisation has marginalised and disempowered Aboriginal and Torres Strait Islander peoples. Equally it is built on the enormous resilience of First Nations peoples and the strength drawn from the rich history, culture, law and knowledge of 65,000 years of Aboriginal peoples and the unique culture, law and knowledge of the peoples of the Torres Strait.

The Path to Treaty seeks a foundation for a better future for Aboriginal and Torres Strait Islander peoples. A respectful relationship between the State and First Nations peoples. And from this foundation, benefit for all Queenslanders.

Broadly, it was planned that the Path to Treaty would be advanced in five phases to enable treaty negotiations to begin:

- phase 1 – From July 2019 to May 2020, the conversation was started with state-wide consultations resulting in the Treaty Working Group report in February 2020 and the Eminent Panel recommendations in February and May 2020.
- phase 2 – From February 2021 to October 2021, the Treaty Advancement Committee (TAC) undertook targeted consultations and provided advice on the detailed implementation of the Eminent Panel recommendations.
- phase 3 – Commencing March 2022, the actioning of the TAC recommendations inclusive of the development of the Path to Treaty Bill for the creation of the First Nations Treaty Institute and Truth-telling and Healing Inquiry; establish the administrative entities (Path to Treaty Office, Government Treaty Readiness Committee (GTRC), Ministerial Consultative Committee, and Independent Interim Body (IIB)); and scoping a local truth-telling and healing process.
- phase 4 – From 2023 onwards, establish the Treaty Institute and Truth-telling and Healing Inquiry (proposed timeframe). In advance of the creation of the Institute, the IIB will advise on administrative and other matters to facilitate the Institute commencement and co-design the Inquiry with the Queensland Government.

- phase 5 – From 2024, develop the treaty negotiation framework by the Treaty Institute and the Queensland Government and establishment of supporting structures such as a Treaty Authority and a Treaty Tribunal or similar mechanism to deal with disputes. Treaty negotiations to begin.

The Path to Treaty Bill 2023 (the Bill) is foundational legislation designed to drive the Path to Treaty. The objectives of the Bill are to establish:

- a First Nations Treaty Institute to support Aboriginal and Torres Strait Islander peoples to develop and provide a framework for Aboriginal and Torres Strait Islander peoples to prepare for and then commence treaty negotiations with the Queensland Government; and
- a Truth-telling and Healing Inquiry to inquire into, and report on, the effects of colonisation on Aboriginal and Torres Strait Islander peoples.

The Bill responds to generations of calls from Aboriginal and Torres Strait Islander peoples in Queensland for a formal agreement (a treaty or treaties) which recognises Aboriginal and Torres Strait Islander peoples as the original custodians of the land, waters and air and provides a just and realistic foundation for a reframed relationship. An agreement that delivers broad ranging, substantive outcomes for Aboriginal peoples and Torres Strait Islander peoples and the wider Queensland community.

By way of background, in July 2019, the Queensland Government launched *Tracks to Treaty – Reframing the relationship with Aboriginal and Torres Strait Islander Queenslanders* and signed a Statement of Commitment to give effect to this reframed relationship. The Eminent Panel and Treaty Working Group were formed to test community support for a treaty process. The public consultations and submissions indicated support for a treaty process and a repeated call for truth and healing to underpin a reframed relationship.

Based on a report prepared by the Working Group, recommendations were made to the Queensland Government in February and May 2020 by the Eminent Panel. The overarching recommendation was that the Queensland Government should proceed with a treaty process in conjunction with truth-telling. In response, the Queensland Government made a Treaty Statement of Commitment, accepting or accepting in-principle the Eminent Panel recommendations on the institutional arrangements required to progress the Path to Treaty.

On 12 February 2021, the Queensland Government appointed the TAC (a committee of Aboriginal, Torres Strait Islander and non-Indigenous Queenslanders) to provide detailed recommendations on the next steps for the Path to Treaty. The TAC provided its report (TAC Report) to the Queensland Government on 12 October 2021.

Importantly, on 15 June 2021 as part of the Queensland Budget, the Government acted on the advice of the Eminent Panel and provided financial security for the treaty process by establishing the $300 million Path to Treaty Fund.

The TAC Report made 22 recommendations, including establishing in legislation a Treaty Institute (the Institute) as a statutory body governed by an Institute Council to support Aboriginal and Torres Strait Islander peoples to prepare for and then participate in treaty negotiations (recommendations 1 to 11); and a formal Truth-telling and Healing Inquiry (the Inquiry) for a three-year term to inquire into the historical and ongoing impacts of colonisation

on Aboriginal and Torres Strait Islander Queenslanders and facilitate truth-telling and healing for all Queenslanders (recommendations 12 to 15).

On 16 August 2022, the Queensland Government, Aboriginal and Torres Strait Islander peoples, and non-Indigenous Queenslanders participated in the signing of Queensland's Path to Treaty Commitment. The Commitment signifies a collective pledge to be courageous and curious, to be open to hearing the truth of our state's history, and to collaborate in readiness for negotiating treaties. The TAC Report and Queensland Government Response to the TAC Report were tabled in Parliament.

The Queensland Government Response to the TAC Report accepted (in full or in-principle) all 22 recommendations made by the TAC, including proposing legislation that will:

- establish the Institute as a statutory body with necessary powers to enable it to perform its functions;
- establish an Institute Council;
- include a preamble that acknowledges the impacts of colonisation and recognition of the rights of Aboriginal and Torres Strait Islander peoples;
- include guiding principles to apply to the Path to Treaty process, and to the parties to the treaty process, that reflect the *United Nations Declaration on the Rights of Indigenous Peoples;* and
- set out the objectives of the formal Inquiry.

The Bill gives effect to the Queensland Government Response to the legislative recommendations in the TAC Report.

Review of *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*

The *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (JLOM Act) provides law and order in, the establishment of community justice groups for, and the regulation of alcohol possession and consumption in, community areas; and entry on trust areas; and other purposes. With the passage of time, some provisions in the JLOM Act have become outdated and redundant.

The Department of Seniors, Disability Service and Aboriginal and Torres Strait Islander Partnerships (DSDSATSIP) has completed a review of the JLOM Act in relation to provisions it administers. The review examined the impact of repealing provisions against the achievement of the JLOM Act's objectives, and any unintended consequences on other laws. The review also considered provisions that did not support the achievement of the Queensland Government's policy objectives, in particular, the commitment to a reframed relationship and compatibility with human rights.

The Bill will amend certain provisions in the JLOM Act, and these amendments align with the Path to Treaty objectives as they repeal provisions that do not support the commitment to a reframed relationship.

Achievement of policy objectives

To achieve its policy objectives, the Bill will establish:

- a First Nations Treaty Institute as a statutory body governed by an Institute Council to support Aboriginal and Torres Strait Islander peoples to prepare for and participate in treaty negotiations;
- a Truth-telling and Healing Inquiry for a three-year term to inquire into the historical and ongoing impacts of colonisation on Aboriginal and Torres Strait Islander Queenslanders and facilitate truth-telling and healing for all Queenslanders.

The Institute will be a statutory body and independent from the Queensland Government. It will be given powers and functions to perform its role to support Aboriginal and Torres Strait Islander peoples in the treaty process. It will be subject to the reporting and governance obligations as other statutory entities established under Queensland legislation, including providing an annual report to Queensland Parliament, and publishing a strategic plan every four years. The Institute would be regulated under the *Financial Accountability Act 2009* and *Statutory Bodies Financial Arrangements Act 1982*. The Institute will have all the powers of an individual and may, for example: enter into arrangements, agreements, contracts and deeds; acquire, hold, deal with and dispose of property; engage consultants; appoint agents and attorneys; and do anything else necessary or desirable to be done in performing its functions.

The Inquiry's function is to: inquire into and document the individual, familial, cultural and societal effects of colonisation on Aboriginal and Torres Strait Islander peoples of Queensland. The function and objectives will be further detailed in the Inquiry's Terms of Reference and will include promoting public awareness, informing education and developing shared understandings of Aboriginal and Torres Strait Islander peoples' cultures, histories, languages and traditions

The Inquiry has elements of a Commission of Inquiry but is customised to respond to the requirements of Aboriginal and Torres Strait Islander peoples by adopting a culturally appropriate and non-legalistic approach. There will be limited compulsion powers directed towards the participation of and production of information or documents from government agencies only. This model intends to encourage voluntary participation and sharing of histories, stories, experiences and truths from Aboriginal and Torres Strait Islander peoples and non-Indigenous Queenslanders alike.

Alternative ways of achieving policy objectives

Implementation of the Institute and Inquiry through legislation is the only feasible way to achieve the policy objectives.

Legislation is required to establish the Institute as a statutory body with specific functions. In deciding to establish the Institute as a statutory body, it was considered not appropriate for a government department to have oversight or undertake activities of the Institute. Self evidentially, the Queensland Government will be a party to future treaty or treaties and as such there exists an inherent conflict of interest. Equally it is important that a body to support Aboriginal and Torres Strait Islander peoples be governed by a Council drawn from Aboriginal and Torres Strait Islander peoples.

Legislation is also required to establish the Inquiry and provide it with powers to require production of documents or information from government agencies. The TAC and the Queensland Government considered that a Commission of Inquiry was not appropriate, given the requirement for a non-legalistic and culturally sensitive approach for the Inquiry.

Estimated cost for government implementation

As per the Queensland Government's response to the TAC Report, a minimum annual allocation of $10 million from the Path to Treaty Fund (the Fund) will be made available to support the Institute to maintain the Path to Treaty process for the duration of treaty-making.

$10 million per year from the Fund will be provided to the Institute, once established, to support its functions, noting that the Fund is limited to supporting treaty-related activities. The performance and operation of the Fund will be reviewed by Queensland Treasury before the end of 2025 to allow consideration of returns and future use of the fund for treaty-related actions.

Allocations from the Fund will be available to commence key functions of the Path to Treaty, including local truth-telling and healing activities, community engagement and research and advisory functions.

Consistency with fundamental legislative principles

Legislation should have sufficient regard to the rights and liberties of individuals – *Legislative Standards Act 1992* (LSA), section 4(2)(a)

The Bill has been drafted in consideration of fundamental legislative principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992* (LSA). Certain clauses in the Bill that raise relevant considerations of FLPs are discussed in further detail below.

Consistency with natural justice

Under section 4(3)(b) of the LSA, legislation should be consistent with the principles of natural justice in that it provides procedural fairness, a right to be heard and there is an unbiased decision maker.

Consequences imposed by legislation should be proportionate and relevant to the actions to which they are applied, provide differing penalties reflecting the seriousness of the offences, and be consistent with other penalties within the legislation.

Removal from office

Clause 51 of the Bill provides that the office of a member of the Treaty Institute Council or chief executive officer becomes vacant if the person completes a term of office and is not reappointed, resigns or is removed from office under clause 53 or 54, or becomes disqualified under clause 55, respectively, because the person:

- has engaged in inappropriate or improper conflict in an official or private capacity
- is incapable of performing their functions

- has neglected their duties
- has a conviction, other than a spent conviction, for an indictable offence
- is an insolvent under administration;
- is disqualified from managing corporations because of the Corporations Act 2001 (Cwlth), part 2D.6;
- the person is disqualified from managing an Aboriginal and Torres Strait Islander corporation under the Corporations (Aboriginal and Torres Strait Islander Act 2006 (Cwlth)
- is asked for a person's consent to make a request under section 60 (criminal history report) and the person does not consent.

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

Requirement to produce documents and answer questions

Clause 80 allows the Inquiry to require a government entity to produce documents or make written submissions to assist the Inquiry in performing its functions.

The government entity must comply with the production notice within a reasonable period. However, the government entity is not required and may refuse to provide the documents if certain provisions apply as set out in clause 83. For example:

- the document is personal information;
- subject to privilege or immunity;
- commercial in confidence; or may prejudice certain proceedings.

If a person is invited under clause 78(2) to attend a truth-telling session in the person's capacity as a chief executive officer and the person either does not attend or attends but the Inquiry considers further information will assist the Inquiry, the Inquiry may give an attendance notice to the person to attend a truth-telling hearing. That person must not fail to attend the truth-telling hearing without reasonable excuse and a maximum penalty of 100 units applies.

These provisions are consistent with the fundamental legislative principles to protect against self-incrimination as clause 86(3) which provides that it is a reasonable excuse for an individual to refuse to answer a question or produce a document or thing if that the answer or production of the document or thing might tend to incriminate the individual or make the individual liable to a penalty.

The requirement for government entities to produce documents and answer questions, if given notice to do so, is necessary to ensure that documents which are relevant to the Truth-telling and Healing Inquiry, but would otherwise not be provided, are provided. The Bill also provides for a truth-telling hearing as an additional way to seek relevant information or documents from a government entity if they do not provide the documents or information for reason other than those under clause 82. Truth-telling is critical to reframing the relationship between First Nations peoples and non-Indigenous Queenslanders. This truth-telling process cannot be comprehensively undertaken unless every opportunity to gather documents to inform the truth are exhausted.

Failing to disclose being charged with, or convicted of, an indictable offence

Clause 61 of the Bill states that if a council member or the chief executive officer is charged with, or convicted of an indictable offence, the person must immediately notify the minister of the offence unless the person has a reasonable excuse. The requirement to notify the Minister is not viewed as breaching fundamental legislative principles as it only requires a person to notify of a specific event, namely being charged with, or convicted of, an indictable offence.

The Bill states that the person must notify the relevant official of the existence of the charge or conviction, details adequate to identify the alleged offence for which the person was charged or convicted, when the alleged offence was committed, and for a conviction, the sentence that was imposed. The matters required in the notice do not implicate the person or make any finding, or any inference, of fact or guilt in relation to the charge. Therefore, the requirement to notify the relevant official is not considered to infringe a person's rights of natural justice or procedural fairness in responding to the matter. This provision is justified because it reinforces the expectation that council members and the chief executive officer are to observe ethical and legal behaviour in carrying out their functions. The rights and liberties of the person are protected because the provision allows for the person to have a reasonable excuse for non-compliance. The information in the notice is also required to be kept confidential by a person who may have access to the information, including the Minister, council member of the Treaty institute Council, senior executive officer or a public service employee performing functions under or relating to the administration of the Bill. The maximum penalty where a person fails to notify the relevant official of being charged with, or convicted of, an indictable offence is 100 penalty units.

Similar offences are included across the Queensland statute book, such as the *Hospital Foundations Act 2018, Jobs Queensland Act 2015, Cross River Rail Delivery Authority Act 2016* and *the Health and Well Being Act 2019* which all impose penalties where a person fails to disclose a conviction relating to an indictable offence. The offence and its penalty is justified because the penalty reinforces the expectation that council members and the chief executive officer are to uphold ethical and legal standards in carrying out their functions. The offence is considered to have a penalty which is proportionate to the offence.

Sufficient regard to Aboriginal tradition and Island custom

The Bill's main purposes are to:

- establish the First Nations Treaty Institute to develop and provide a framework and support for Aboriginal peoples and Torres Strait Islander peoples to enter into treaty negotiations with the State; and

- provide for the establishment of the Truth-telling and Healing Inquiry to inquire into and report on the effects of colonisation on the Aboriginal peoples and Torres Strait Islander peoples and the history of Queensland.

The Bill will ensure these main purposes are achieved with sufficient regard to Aboriginal tradition and Island custom through:

- requiring the principles for administering the Bill are complied with, by ensuring that in partnership and good faith, the rights and history of Aboriginal and Torres Strait Islander peoples are acknowledged and responded in accordance with the *Human Rights Act 2019* and United Nations Declaration on the Rights of Indigenous Peoples (clause 6);
- requiring the Treaty Institute Council and members to have particular regard to the interests of Aboriginal peoples and Torres Strait Islander peoples (clause 18, 24);
- requiring CEO to be appointed only if they are an Aboriginal or Torres Strait Islander person and Treaty Institute Council members to be appointed having regard to the cultural diversity of Aboriginal peoples and Torres Strait Islander peoples (clause 22 & 37);
- requiring Truth-telling and Healing Inquiry members to have at least 1 Aboriginal person and 1 Torres Strait Islander person and the majority of members are Aboriginal or Torres Strait Islander (clause 67);
- requiring members of the Truth-telling and Healing Inquiry to have particular regard to the interests of Aboriginal peoples and Torres Strait Islander peoples (clause 71); and
- requiring the Inquiry to have regard to Aboriginal tradition or Ailan Kastom during truth-telling sessions (clause 72).

Additionally, the Bill contains a preamble that recognises numerous aspects of Aboriginal and Torres Strait Islander law, history, custom and tradition. The principles for administering the Bill also include the importance of respecting and protecting Aboriginal law and tradition, and Torres Strait Islander law and Ailan Kastom.

Aboriginal law and Ailan Kastom are defined in the Bill as the body of culturally embedded principles and practices which govern traditional Aboriginal and Torres Strait Islander communities or groups. The Bill's recognition and application of customary law is otherwise not used in Queensland legislation.

Based on the matters outlined above, the Bill is considered to have sufficient regard to Aboriginal tradition and Island custom.

Reasonable excuse and onus of proof

Under section 4(3)(d) of the LSA, legislation should not reverse the onus of proof in criminal proceedings without adequate justification.

The Bill includes a range of circumstances in which certain provisions provide for a reasonable excuse to offence provisions.

The reasonable excuse provisions do not breach fundamental legislative principles as they are intended to impose only an evidential burden on the person to advise or identify evidence of a reasonable excuse, rather than a legal burden to prove a reasonable excuse beyond a reasonable doubt. Therefore, the right to be presumed innocent is not reversed.

However, in the event that the reasonable excuse defences did breach fundamental legislative principles, that breach is justified as this form of defence operates as a fair and balanced mechanism to ensure persons prosecuted are given an opportunity to excuse their failure to comply under the provisions expressly identifying acceptable reasons why the requirements may not be complied with. Failing to include these excuse provisions could result in persons being prosecuted unfairly and is not reflective of the premise and intent of the Bill, which includes a function through the Inquiry of creating an open and transparent truth-telling and healing environment. The reasonable excuse provision is to ensure the Bill effectively achieves its purpose at the expense of the person seeking to rely on such defences having to produce the evidence of that defence. The person seeking to rely on such a defence is likely to exclusively hold the knowledge of that fact and it would therefore be impractical for the onus to be on the State to prove a reasonable excuse did not exist, especially when having regard to the broad range of reasons which may be considered reasonable.

Consistency with rights and liberties – privacy and confidentiality

The right to privacy and confidentiality has been identified as important to the consideration of whether legislation has sufficient regard to an individual's rights and liberties. Where legislation requires the disclosure of information concerning a person's criminal history, the legislation may interfere with the rights and liberties of an individual under 4(2)(a) of the LSA.

In relation to:

- financial or other interests that may affect the proper performance of a member of the Treaty Institute Council's duties, the member must disclose a material personal interest that could conflict with the proper performance of their duties as soon as the relevant facts come to the member's knowledge (clause 30). This provision is not considered a breach of the fundamental legislative principles because the person disclosing their interest is only prevented from voting on the matter and may participate in further consideration of the matter if the other members at the meeting agreement to their further participation.
- insolvency and disqualification from managing a corporation, the Bill provides that a member of the Treaty Institute must immediately give notice of that fact to the Minister and it is an offence not to do so (clause 55).
- the appointment of or the continuation of a member of the Treaty Institute or a senior executive officer, the Bill provides that a relevant official for the office may ask the commissioner of the police service for a written report about the criminal history of the person and a brief description of the circumstances of a conviction mentioned in the criminal history (clause 60). The meaning of criminal history in the Bill does not abrogate from the meaning in the *Criminal Law (Rehabilitation of Offenders) Act 1986* which excludes quashed, set aside and expired convictions and charges.
- new convictions, the Bill provides that a member or senior executive who is convicted of an indictable offence during their appointment, that person must, within 14 days of the conviction, give written notice of the conviction to the relevant official, unless they have a reasonable excuse (cluse 61).

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

The requirement for criminal history information and confidential information to be provided and disclosed is necessary to ensure members of the Institute Council and the Inquiry are appropriately suitable and qualified to ensure the integrity of the respective entities and needs to take precedence over a person's right to privacy. To ensure members of the Institute Council or Inquiry appropriately deal with the collection, use and handling of criminal history information and confidential information the Bill:

- requires the member or senior executive officer to consent to the relevant official requesting a copy of the criminal history and relying on information contained in the parent's criminal history to decide whether to make the appointment or allow continuation of a member (clause 60);
- makes it an offence for a to disclose any criminal history information unless it is necessary to perform that person's functions, otherwise permitted by law or with the consent of the person whom the criminal history relates (clause 61);
- requires the criminal history is destroyed as soon as practicable after it is no longer needed (clause 62);
- makes it an offence to disclose any confidential information unless it is necessary to perform that person's functions, otherwise permitted by law or with the consent of the person whom the criminal history relates (clause 63 for the Treaty Institute and clause 91 for the Inquiry);
- Requires the Treaty Institute to ensure annual reports do not include confidential information without the consent of the person to whom the information relates (clause 49).

Additionally, other than a government entity, no person or entity is compelled to give evidence or produce information to either the Institute or the Inquiry.

Appropriateness of penalties

A fundamental legislative principle deals with the appropriateness of penalties including that:

- consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation;
- legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence
- penalties within legislation should be consistent with each other.

Penalties are provided for in the Bill with respect to false and misleading information, confidential information and publishing identifying material.

The Bill provides for a maximum penalty of:

- 100 penalty units for failing to disclose an insolvency or disqualification under the Corporations Act (clause 55);
- 100 penalty units for failing to disclose a new conviction without reasonable excuse (clause 61);
- 100 penalty units for disclosing criminal history information to anyone else unless permitted under the Bill (clause 62);
- 100 penalty units for disclosing confidential information obtained by the Treaty Institute Council to anyone else unless permitted under the Bill (clause 63);

- 100 penalty units for failing to attend as required by an attendance notice (clause 86);
- 100 penalty units for failing to take an oath, or affirmation when required (clause 86);
- 100 penalty units for refusing to answer a question required by the Inquiry (clause 86);
- 100 penalty units for failing to make an oral submission as required by an attendance notice (clause 86);
- 100 penalty units for disclosure of confidential information unless permitted by the Bill (clause 91);100 penalty units for providing false or misleading information or a document (clause 92);

This is generally consistent with other legislation with similar offences, noting that penalty unit amounts differ, for example:

- *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*, section 99 provides for a maximum penalty of 100 penalty units for knowingly providing false or misleading information in a material particular.
- *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020* section 102 provides for a maximum penalty of 100 penalty units for disclosing confidential information without excuse or consent.
- *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*, section 104 provides for a maximum penalty of 100 penalty units for an individual and 1000 penalty units for a corporation for publishing identifying materials without excuse or consent.
- *Public Guardian Act 2014*, section 22 provides for a maximum penalty of 100 penalty units for failing to comply with a request to provide information by the public guardian.
- *Public Guardian Act 2014*, section 23 provides for a maximum penalty of 100 penalty units for failing to provide information by statutory declaration to the public guardian.
- *Public Guardian Act 2014*, section 25 provides for a maximum penalty of 100 penalty units for failing to attend before the public guardian when requested by notice from the public guardian to do so.

The penalties imposed under the Bill are considered appropriate as they are proportionate and relevant to the actions to which the consequences relate and are generally consistent with other similar legislation.

Protection from lability

Section 4(3)(h) of the Legislative Standards Act 1992 states that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation does not confer immunity from proceeding or prosecution without adequate justification.

Clause 59 of the Bill protects members of the Treaty Institute Council, senior executive officers and Treaty Institute staff from personal liability in civil matters for acts done or omissions made honestly and without negligence.

Clause 89 of the Bill protects members of the Inquiry from personal liability in civil matters for acts done or omissions made honestly and without negligence.

The conferral of immunity in this instance is justified as:

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

Consultation

Extensive consultation was held with stakeholders, including peak bodies, local and state governments, and experts in different fields, across phases one and two of the advancement of the Path to Treaty (as mentioned above).

The initial Path to Treaty consultation undertaken by the Eminent Panel and Treaty Working Group from 2019 focused on community engagement on what a treaty or treaties might mean to Queensland and whether there was support for treaty-making. This included meeting with more than 1,000 Aboriginal, Torres Strait Islander and non-Indigenous Queenslanders, which included face-to-face engagements in 24 locations across the state.

From this broad public consultation, three major themes emerged along with strong support for treaty-making in Queensland:

- inclusion: treaty is a conversation for all Queenslanders, both Indigenous and non-Indigenous.
- reconciliation: Aboriginal and Torres Strait Islander peoples want their stories told and to be listened to - truth-telling and healing are at the heart of our journey towards treaty.
- treaty ready: Aboriginal and Torres Strait Islander peoples and their communities need to become 'treaty ready' for future discussions and negotiations about a possible treaty or treaties in Queensland.

The TAC was then formed to build on the work of the Eminent Panel and Treaty Working Group and undertook targeted consultation. Firstly, the TAC held face to face and virtual meetings in communities and with groups to provide feedback on the outcome of phase 1 of the process. Secondly, the TAC met with representatives to understand the implications of national developments in the treaty process since the 2020 Treaty Statement of Commitment and Response to the Eminent Panel Recommendations. This included talking to: First Peoples' Assembly of Victoria; Senior Advisory Group to the National Indigenous Voice Co-Design; Northern Territory Treaty Commission; Queensland Treasury; and Senior office holders of the State Library of Queensland, Queensland Museum, Queensland Art Gallery/Queensland Gallery of Modern Art, and Queensland State Archives.

In August 2022, the IIB was established to continue the momentum and to provide advice in the development of the Bill through phase 3. The Bill reflects outcomes from phases 1 and 2, and is the product of an extensive and detailed co-design process with the IIB. The Bill is consistent with the TAC Report recommendations as accepted by the Queensland Government.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and is not uniform with any current legislation of the Commonwealth or another State or Territory. However, approaches in other jurisdictions for treaty processes, particularly Victoria, were taken into consideration during the drafting of the Bill.

Further, it should be noted that the Bill and the Queensland Path to Treaty process is consistent with the Uluru Statement from the Heart and its themes of Voice, Treaty and Truth. The announcement by the Commonwealth government of the intention to advance a referendum to seek constitutional recognition of First Nations peoples, if successful, would establish a 'Voice' to the National Parliament. The First Nations Consultative Committee has been established by the government to help design a State based Voice structure for Queensland.

Notes on provisions

Preamble

The preamble sets out the Parliament of Queensland's recognition of the importance, significance and endurance of Aboriginal and Torres Strait Islander peoples, their traditions, history, laws, languages, culture and traditional knowledge. Importantly, the preamble recognises that the colonisation of Queensland occurred without the consent of Aboriginal and Torres Strait Islander peoples. Further, the preamble states that Aboriginal and Torres Strait Islander peoples assert they have never ceded their sovereignty over their lands, seas, waters, air and resources, and continue to assert their sovereignty. The preamble is consistent with the TAC Report Recommendations 2.1 – 2.6.

Part 1 Preliminary

Division 1 Introduction

Clause 1 states when enacted, the Bill will be cited as the Path to Treaty Bill 2023.

Clause 2 provides the Bill commences on a day to be fixed by proclamation.

Clause 3 provides the Bill will bind all persons, including the State, and as far as the legislative power of the Parliament permits, the Commonwealth and the other States. The clause also provides the State, Commonwealth or another State cannot be prosecuted for an offence committed under the Bill. This clause does not preclude a government entity from complying with a provision in the Bill to which an offence applies.

Clause 4 provides the Bill does not affect a right or interest of an Aboriginal person, a Torres Strait Island person, or representative entity has under another Act or any law of the Commonwealth or another State.

Division 2 Purposes and principles

Clause 5 states the main purposes of the Bill are to establish: the First Nations Treaty Institute to develop and provide a framework for Aboriginal and Torres Strait Islander peoples to enter into treaty negotiations with the State and support Aboriginal and Torres Strait Islander peoples to participate in treaty negotiations; and the Truth-telling and Healing Inquiry to inquire into, and report on, the impacts of colonisation on Aboriginal and Torres Strait Islander peoples and the history of Queensland.

Clause 6 sets out the principles for administering the Bill.

Subclause (1) provides the main principle to ensure that, in partnership and good faith, the rights and history of Aboriginal and Torres Strait Islander peoples are acknowledged and respected in accordance with the *Human Rights Act 2019* and the principles of the United Nations Declaration on the Rights of Indigenous Peoples. This reflects the TAC Report Recommendation 2.7.

Subclause (2) sets out additional principles that apply:

- the importance of self-determination for Aboriginal and Torres Strait Islander peoples;
- the importance of Aboriginal and Torres Strait Islander peoples to be able to give free, prior and informed consent as part of treaty negotiations and the making of a treaty;
- the importance of respecting and protecting Aboriginal law, Aboriginal tradition, Torres Strait Islander law and Ailan Kastom;
- the importance of equality and non-discrimination.

These principles are consistent with the guiding principles recommended in the TAC Report (Recommendation 3).

Division 3 Interpretation

Clause 7 states the definitions of particular words used in the Bill are in schedule 1.

Clause 8 defines the meaning of treaty negotiations which is a key term used in the Bill.

Subclause (1) provides negotiations are treaty negotiations when they are about entering into a treaty between the State and Aboriginal or Torres Strait Islander peoples; and entered into and conducted under the treaty-making framework.

Subclause (2) gives examples of what treaty negotiations may relate to:

- a particular area of Queensland;
- a particular area of Queensland waters;
- particular Aboriginal peoples;
- particular Torres Strait Islander peoples.

Subclause (3) clarifies treaty negotiations may be entered into with the State for the development of a treaty between the State and more than one community or group of Aboriginal or Torres Strait Islander peoples. Pursuant to section 32C of the *Acts Interpretation Act 1954*, a treaty could be more than one treaty.

Part 2 First Nations Treaty Institute

Division 1 Establishment

Clause 9 establishes the First Nations Treaty Institute (hereafter referred to as the Treaty Institute). This reflects the TAC Report Recommendation 1 to establish a First Nations Treaty Institute. The TAC Report states that it is fundamental to the treaty process that it be auspiced by a body that is independent of the Queensland Government which can work with, and reflect the aspirations of, First Nations peoples.

Clause 10 provides the Treaty Institute is a body corporate and may sue and be sued in its corporate name. This will enable the Treaty Institute to perform its functions independently of government, including enter into contracts, employ staff and engage consultants. This is consistent with the TAC Report Recommendation 1.2 for the Institute be a statutory entity to provide the security and certainty that is important to all.

Clause 11 provides the Treaty Institute does not represent the State. The Treaty Institute is intended to be independent of government and to perform its function with autonomy in its day-to-day decisions, to instil greater public confidence in the Path to Treaty.

Clause 12 clarifies the application of certain Acts that form part of Queensland's Integrity Framework to ensure the Treaty Institute is subject to this framework (which also includes the *Human Rights Act 2019*, *Public Records Act 2002* and *Auditor-General Act 2009*). This will ensure that the Treaty Institute keeps a standard of oversight, transparency and accountability that the community expects from a Queensland statutory body (which is consistent with the rationale for Recommendation 19 in the TAC Report).

Subclause (1) clarifies the Treaty Institute is a statutory body under the *Financial Accountability Act 2009* and *Statutory Bodies Financial Arrangements Act 1982*.

Subclause (2) clarifies that the Treaty Institute is a unit of public administration under the *Crime and Corruption Act 2001;* a public authority under the *Information Privacy Act 2009*, *Ombudsman Act 2001* and *Right to Information Act 2009*; and a public sector entity under the *Public Interest Disclosure Act 2010* and *Public Sector Ethics Act 1994*. These Acts are elements of Queensland's Integrity Framework.

It is intended that the Treaty Institute is established for a public purpose. To remove any doubt or uncertainty about the application of the Acts set out in subclause (2)(b) to (f), subclauses (3) and (4) specifically confirm, for the Treaty Institute given its unique nature, who is the responsible Minister and chief executive officer.

Division 2 Functions and powers

Clause 13 sets out the main functions of the Treaty Institute in preparing for the Queensland Government and Aboriginal and Torres Strait Islander peoples to enter into and participate in treaty negotiations. These functions reflect the TAC Report Recommendation 4.

Subclause (1)(a) provides in consultations with the Queensland Government, the Treaty Institute is to develop a treaty-making framework to assist the State and Aboriginal and Torres Strait Islander peoples to:

- assess the readiness of, and identify the requirements necessary for, Aboriginal and Torres Strait Islander peoples and the State to enter into and participate in treaty negotiations;
- establish an understanding and recognition of the roles and responsibilities of each party to treaty negotiations;
- establish processes for conducting treaty negotiations;
- develop and identify dispute resolution strategies to facilitate treaty negotiations; and
- consider the legal effect of a treaty.

Subclause (1)(b) provides the Treaty Institute is to consult with, support and empower Aboriginal and Torres Strait Islander peoples and representative entities to participate in treaty negotiations.

Subclause (1)(c) provides the Treaty Institute will develop and implement strategies to encourage support for treaty negotiations within the Queensland community generally.

Subclause (1)(d) provides the Treaty Institute will support Aboriginal and Torres Strait Islander peoples to record the impact and effects of colonisation to inform their participation in treaty negotiations.

Subclause (1)(e) provides the Treaty Institute will undertake and promote research to inform the development of the treaty-making framework; and support Aboriginal and Torres Strait Islander peoples to participate in treaty negotiation.

Subclause (1)(f) provides the Treaty Institute will provide advice, and make recommendations to, the Minister about the treaty-making framework.

Subclause (1)(g) provides the Treaty Institute will provide advice to the Minister on, and assist in, implementing recommendations contained in the Inquiry report given to the Minister under clause 88.

Subclause (3) clarifies it is not a function of the Treaty Institute to be party to treaty negotiations or act on behalf of a party to treaty negotiations. This is in keeping with the Treaty Institute being independent of government, and being a facilitating and enabling body to design the treaty-making process and support Aboriginal and Torres Strait Islander peoples to be equipped to negotiate treaty. This also reflects TAC Report Recommendation 1.4. The TAC Report considered that the right to negotiate treaties rests primarily with First Nations groups in reflection of their distinct rights and needs.

Clause 14 provides the Treaty Institute has all the powers of an individual and any other power given to it under this Bill or another Act. This is consistent with the TAC Report Recommendation 5.3 for the Institute to have powers to do all things necessary to carry out its functions.

Division 3 Treaty Institute Council

Subdivision 1 Establishment, functions and powers

Clause 15 establishes the Treaty Institute Council as the governing body of the Treaty Institute. This includes the inaugural Council which will be in place for the first 2 years (the inaugural period). Please refer to clause 20 for additional explanations.

Clause 16 sets out the functions of the Treaty Institute Council, including:

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

Clause 17 provides the Treaty Institute Council has the power to do anything necessary or convenient in performing its functions.

Clause 18 provides the Treaty Institute Council must act independently and in the public interest, having regard to the interests of Aboriginal and Torres Strait Islander peoples. The clause also clarifies that 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 power. This is in keeping with the Treaty Institute being independent of government, and being a facilitating and enabling body to advance the work to make Queensland treaty ready, as well as support Aboriginal and Torres Strait Islander peoples to be equipped to negotiate treaty.

Subdivision 2 Membership

Clause 19 requires the Treaty Institute Council membership:

- to consist of 10 members;
- to be appointed by the Governor in Council on recommendation of the Minister;
- the Minister may only recommend a person for appointment as a member if the person is an Aboriginal or Torres Strait Islander person, and the Minister is satisfied the person is appropriately qualified;
- is appointed under this Bill and not the *Public Sector Act 2022.*

Subclause (4) provides that in nominating a person to be a member, the Minister must have regard to whether the membership of the Treaty Institute Council will reflect the cultural diversity of Aboriginal and Torres Strait Islander peoples; and the gender diversity of Queensland. For an appointment after the inaugural period, the Minster must have regard to recommendations contained in the inaugural report in relation to the appointment of a member. The membership of the Treaty Institute Council is consistent with the TAC Report Recommendations 6.1 – 6.4.

Clause 20 provides the term of appointment of members to the Treaty Institute Council.

Subclause (1) provides the term of appointment for a Treaty Institute Council member will be set out in their instrument of appointment.

Subclause (2) provides the term of appointment for members appointed before or during the inaugural period can not be longer than the inaugural period, as recommended in the TAC Report (Recommendation 6). For example, members appointed from the beginning of the inaugural period will have a term of no more than 2 years, however if a member leaves and is replaced by another member 1 year and 2 months into the inaugural period, the replacement member's term will be 10 months only.

Subclause (3) provides a term of no more than 3 years for members appointed after the inaugural period.

Subclause (4) allows a member to be reappointed including at the expiry of the inaugural period.

Clause 21 provides the Governor in Council will decide the remuneration and allowances to be paid to a Treaty Institute Council member, and the member holds office on terms and conditions decided by the Governor in Council.

Clause 22 provides the process and requirements for appointing chairpersons. The Treaty Institute Council must appoint 2 members as chairpersons for the term stated in the person's instrument of appointment as a chairperson (which must not end later than their appointment as a member of the Council). In appointing chairpersons, Council must have regard to the

cultural diversity of Aboriginal and Torres Strait Islander peoples, and gender diversity of Queensland.

Clause 23 provides the process to appoint 1 chairperson to be the administrative chairperson for the purposes of convening meetings or receiving notices. The term of the administrative chairperson is stated in their instrument of appointment as administrative chairperson. The Treaty Institute Council will determine the appropriate term of appointment, however the term must not be more than one half of their term of appointment as chairperson and end later than their term as chairperson. A person cannot be reappointed for another term as administrative chairperson immediately after their term as administrative chairperson ends.

Clause 24 requires Treaty Institute Council members to act independently and in the public interest having particular regard to the interest of Aboriginal and Torres Strait Islander peoples, in the performance of their duties and functions as a member.

Subdivision 3 Treaty Institute Council meetings

Clause 25 states subject to the provisions of this subdivision, the Treaty Institute Council may conduct its business, including its meetings, in the way it considers appropriate.

Clause 26 sets out the requirements for convening meetings of the Treaty Institute Council by the administrative chairperson.

Subclause (2) requires the administrative chairperson to convene a meeting as follows:

- at least 6 times each year;
- if asked, in writing, by at least half of the members of the Treaty Institute Council;
- if the administrative chairperson is given a notice pursuant to clause 52(2) regarding suspension of a Treaty Institute Council member (suspension notice).

Subclause (3) requires the other chairperson to convene the meeting if a suspension notice is given about the administrative chairperson.

Subclause (4) provides the chairperson convening the meeting must, as soon as practical after receiving a suspension notice, advise each member of the reason for calling the meeting.

Subclause (5) provides the administrative chairperson may also convene a meeting if asked by the Minister in writing.

Clause 27 sets out the process for the who is to preside at meetings of the Treaty Institute Council.

Subclauses (1), (2) and (3) provide the administrative chairperson is to preside at all Treaty Institute Council meetings, however if they are absent from a meeting, the other appointed chairperson present is to preside. If neither chairperson is present at a meeting, the Council is to chose a member present to preside.

Subclauses (4) and (5) provide an exception for meetings convened under clause 26(3) when the chairperson who convened the meeting must preside or if they are not present at the

meeting, the Council is to choose a member present (other than the administrative chairperson) to preside.

Clause 28 provides the quorum for a meeting of the Treaty Institute Council, other than a meeting held under clause 26(2)(c) or (3) (regarding suspension of a Council member).

Subclause (1) provides a quorum for a meeting is a majority (at least 51%) of the Council for the time being (regardless if they are present at the meeting).

Subclause (2) provides the quorum for a meeting under clause 30 (where a member has a material personal interest, and is required not to be present during deliberations, or not to take part in any decision of the Treaty Institute Council) will be the majority of the remaining Council members (regardless if they are present at the meeting).

Clause 29 provides the voting process at a Treaty Institute Council meeting (other than for suspension of a Council member). A question raised at a meeting will be decided by majority of votes of the members present who are able to vote. If the votes are equal, the member presiding at the meeting will have the casting vote to resolve the tie.

Clause 30 provides the process to manage the disclosure of personal interests at a Treaty Institute Council meeting if:

- a matter is being considered, or about to be considered at a meeting of the Council; and
- the member has a material personal interest in the matter; and
- the material personal interest could conflict with the proper performance of the member's duties in relation to the consideration of the matter.

Subsection (2) provides a member has a material personal interest in a matter if any of the following stands to gain a benefit or suffer a loss because of the consideration of the matter -

- the member;
- the member's spouse;
- a parent, child, sibling or other relative of the member;
- an individual employed by the member;
- an employer, other than a government entity, of the member;
- an entity, other than a government entity, of which the member is an office holder.

Subclauses (3) and (6) require a member to disclose the nature of the material personal interest to the other members at the meeting, as soon as practicable after the member becomes aware of relevant facts, and the disclosure must be recorded in the meeting's minutes.

Subclauses (4) and (5) provide the member may only participate further in the consideration of the matter where they have a material personal interest, if a majority of the other members at the meeting agree to the member's further participation, however the member cannot vote on the matter at the meeting.

Subclause (7) provides a failure by a member to disclose a material personal interest does not automatically invalidate a decision made by the Treaty Institute Council.

Clause 31 requires the Treaty Institute Council to keep minutes of its meetings.

Division 4 Advisory committees

Clause 32 requires the Treaty Institute Council to establish two advisory committees for the term of the Treaty Institute to consider and provide advice to the Council about matters relating to:

- financial auditing and financial risk management in relation to the Treaty Institute;
- human rights matters, ethical and culturally appropriate research and investigation.

This is consistent with the TAC Report Recommendations 9.1 and 9.2.

Clause 33 provides the Treaty Institute Council may establish other advisory committees as and when required to assist the Council to perform its functions.

Clause 34 sets out what the Treaty Institute Council must decide when establishing an advisory committee:

- its functions or terms of reference;
- the number of its members and appropriate qualifications for membership;
- how and when a committee must conduct its meetings or report to the Council;
- term of the committee pursuant to clause 33.

Subclause (2) requires the Treaty Institute Council to appoint a Council member to be chairperson of each advisory committee, which is consistent with the TAC Report Recommendation 9.3.

Subclause (3) provides other members of an advisory committee are appointed by the Treaty Institute Council.

Subclause (4) provides that advisory committee members, other than the chairperson of the committee, holds office on the terms and conditions as stated in their instrument of appointment.

Clause 35 provides 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, and clarifies the Treaty Institute Council is not bound by any advice provided or recommendation made by the committee.

Clause 36 provides the Treaty Institute Council must not delegate any of its functions to an advisory committee, which is consistent with the TAC Report Recommendation 9.4.

Division 5 Treaty Institute CEO

Clause 37 requires the Treaty Institute Council to appoint an Aboriginal or Torres Strait Islander person who is appropriately qualified as the Treaty Institute CEO, and clarifies the person will be appointed under this Bill (not the *Public Sector Act 2022*), and will be an employee of the Treaty Institute. This is consistent with the TAC Report Recommendations 8.1 - 8.4.

Clause 38 sets out the responsibilities of the Treaty Institute CEO.

Subclause (1) provides the CEO is responsible for the day-to-day administration of the Treaty Institute, including:

- the effective and efficient administration and operation of the Institute;
- employing and managing Treaty Institute staff;
- engaging contractors.

Subclause (3) requires the CEO to comply with the written policies and directions of the Council when carrying out their responsibilities.

Subclause (4) clarifies the CEO is accountable to the Council.

Clause 39 provides the term of appointment of the Treaty Institute CEO. The intent is for the CEO to be appointed for up to 2 years during the inaugural period, and after that, for up to 4 years.

Subclause (1) provides the CEO holds office for the term stated in the officer's instrument of appointment.

Subclause (2) provides for the appointment of the CEO during the first 2 years of the Treaty Institute (which is the inaugural period). Practically, during the inaugural period, the CEO can only be appointed for 2 years or up to the end of the inaugural period. If the CEO leaves during the inaugural period and is replaced by another CEO, for example, 1 year and 2 months into the inaugural period, then the replacement CEO's term can only be 10 months.

Subclauses (3) and (4) provide that after the inaugural period ends, the term of the Treaty Institute CEO thereafter must not be longer than four years, and the CEO may be reappointed.

The TAC Report Recommendation 8.5 provided that the term of appointment be: for the first CEO – not more than 2 years; and for any subsequent CEO – not more than 3 years. Through the co-design process it was decided that 4 years was preferable to 3 for subsequent CEO appointment periods as this aligns with Institute's strategic plan cycle.

Clause 40 provides remuneration and allowances to be paid to the Treaty Institute CEO, which will be decided by the Treaty Institute Council. Further, the CEO holds office on the terms and conditions, not provided by this Bill, as decided by the Treaty Institute Council.

Clause 41 allows the Treaty Institute CEO to delegate a function or responsibility of the office to an appropriately qualified Treaty Institute officer, being the Treaty Institute secretary or staff employed under clause 47.

Division 6 Treaty Institute secretary

Clause 42 requires the Treaty Institute Council to appoint a suitability qualified person as the Treaty Institute secretary. The secretary will be an employee of the Treaty Institute and appointed under this Bill and not the *Public Sector Act 2022*. This is consistent with TAC Report Recommendation 8.2.

Clause 43 states the responsibilities of the Treaty Institute secretary and subclause (1) lists those responsibilities as follows:

- to advise the Treaty Institute on administration and governance matters to assist the Institute in the performance of its functions;
- to support the effective and efficient administration and operation of the Treaty Institute Council and the advisory committees;
- to ensure the implementation of, and compliance with, the written policies and directions of the Treaty Institute Council;
- to ensure the Treaty Institute Council performs its functions and exercises its powers in accordance with the principles of transparency and accountability.

Subclause (2) states the secretary also has the responsibilities given to them under this Bill or another Act.

Subclauses (3) and (4) require the secretary to comply with the written policies and directions of, and is accountable to, the Treaty Institute Council.

Clause 44 provides the term of appointment of the Treaty Institute secretary. The intent is for the secretary to be appointed for 2 years initially during the inaugural period, and after that, for no more than 4 years.

Subclause (1) states the secretary holds office for the term stated in their instrument of appointment.

Subclause (2) provides for the appointment of the secretary during the first 2 years of the Treaty Institute (which is the inaugural period). Practically, during the inaugural period, the secretary can only be appointed for 2 years or up to the end of the inaugural period. If the secretary leaves during the inaugural period and is replaced by another secretary, for example, 1 year and 2 months into the inaugural period, then the replacement secretary's term can only be 10 months.

Subclauses (3) and (4) provide that after the inaugural period ends, the term of the secretary thereafter must not be longer than four years, and the secretary may be reappointed.

Clause 45 provides the remuneration and allowances to be paid to the Treaty Institute Council secretary, which will be decided by the Treaty Institute Council. Further, the secretary holds office on the terms and conditions, not provided for by this Bill, as decided by the Treaty Institute Council.

Clause 46 allows the Treaty Institute secretary to delegate a function or responsibility of the office to an appropriately qualified person employed under clause 47.

Division 7 Other staff

Clause 47 allows the Treaty Institute to employ staff it considers appropriate, and staff are employed under this Bill and not the *Public Sector Act 2022*. The conditions of employment are set by the Treaty Institute.

Division 8 Reports

Clause 48 requires the Treaty Institute Council to give its first report to the Minister within 6 months before the day the inaugural period ends, about the performance of the functions of the Treaty Institute and the Treaty Institute Council, including an alternative process for appointing a Treaty Institute Council member.

Subclause (2) sets out other matters which may be covered in this report.

Clause 49 provides what the Treaty Institute annual report must include, and that it will be subject to section 63 of the *Financial Accountability Act 2009.*

Subclause (3) requires the Council to approve the annual report before it is given to the Minister.

Subclause (4) requires the Council to ensure the information included in the annual report does not contain confidential information without consent of the person to whom the information relates.

The reporting requirements are consistent with the TAC Report Recommendation 10.

Division 9 Other matters

Subdivision 1 Preliminary

Clause 50 sets out the definitions for division 10.

Subdivision 2 Provisions relating to particular office holders

Clause 51 provides the circumstances when a vacancy arises in the office of a member of the Treaty Institute Council or a senior executive officer, including if the person:

- completes their term and is not reappointed;
- resigns by notice to the relevant official for the office;
- is removed from office under section 53 or 54;
- becomes disqualified from continuing as a member under section 55;
- for a member of the Treaty Institute Council, is absent from 3 consecutive meetings of the Council without a reasonable excuse or Council's permission.

Clause 52 sets out the process if a member of the Treaty Institute Council (first member) considers another member (other member) should be suspended due to an allegation of misconduct, or a matter under clauses 53 or 55 has arisen:

- the first member may give each chairperson and the other member a notice asking that a meeting of the Council be convened under clause 26 and stating why the other member should be suspended;
- at the meeting, the Council may decide by special resolution, to suspend the other member. A special resolution means at least two-thirds of the Council members (regardless if they are present at the meeting) need to approve the resolution;
- if the Council decides to suspend the other member, it must give the member a notice stating the reason and the period for suspension (not more than 60 days);
- the suspension takes effect from the day the notice is given and continues until the earlier of either: the end period stated in the notice; or, if the Council decides to revoke the suspension, the day the decision to revoke the suspension is made;
- as soon as practicable after deciding to make or revoke a suspension, the Council must give notice to inform the Minister.

Clause 53 allows the Governor in Council, on the Minister's recommendation, to remove a member from the Treaty Institute Council from office if the Minister is satisfied the member has:

- engaged in inappropriate or improper conduct in an official capacity or private capacity that reflects seriously and adversely on the office; or
- become incapable of performing their functions; or
- neglected their duties or performed their functions incompetently.

Subclause (2) provides the Minister may consult with the Treaty Institute Council when considering their recommendation under subclause (1).

Subclause (3) provides this clause does not limit the Governor in Council's powers under section 25 of the *Acts Interpretation Act 1954*.

Clause 54 allows the Treaty Institute Council (through a meeting held in accordance with clause 28) to remove a senior executive officer from office if satisfied the officer has:

- engaged in inappropriate or improper conduct in an official capacity or private capacity that reflects seriously and adversely on the office; or
- become incapable of performing the functions or responsibilities of the office; or
- neglected their duties or performed their functions incompetently.

Clause 55 sets out the circumstances when a person is automatically disqualified from becoming or continuing as a member of the Treaty Institute Council or a senior executive officer.

Subclause (1) provides a person is disqualified from becoming or continuing as a member of the Treaty Institute Council or senior executive officer if the person:

- is an insolvent under administration under the Corporations Act, section 9; or
- is disqualified from managing corporations because of the Corporations Act, part 2D.6; or
- is disqualified from managing an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cwlth); or
- has a conviction, other than a spent conviction, for an indictable offence; or

- refuses to provide consent to a relevant official for a criminal history request made under section 60.

Subclause (2) provides a person must give immediate notice, unless they have a reasonable excuse, of the insolvency or disqualification to the relevant official of the office.

Clause 56 requires a senior executive not to engage in any other paid employment or actively take part in the activities of a business – outside the responsibilities of the office the person holds – without the prior written approval of the Treaty Institute Council.

Clause 57 requires a senior executive officer who has or suspects they have a conflict of interest related to the discharge of the responsibilities of their office, to disclose the nature of the interest and conflict to the Treaty Institute Council as soon as practicable. Further, they must not take any part in a matter that is or may be affected by the conflict unless authorised by the Treaty Institute Council.

Clause 58 provides for the preservation of rights of a public service officer, if they are appointed as a member of the Treaty Institute Council, a senior executive officer or a Treaty Institute staff member.

Subclause (2) provides 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 Treaty Institute staff member were a continuation of service as a public service officer.

Subclause (3) states at the end of the person's term of office, or on resignation, the person's service will be taken to be service of a like nature in the public service for deciding the person rights as a public service officer.

Clause 59 provides a member of the Treaty Institute Council, a senior executive officer or Treaty Institute staff member does not incur civil liability for an act done, or omission made, honestly and without negligence under this part. Instead, the liability attaches to the Treaty Institute.

Subdivision 3 Criminal history

Clause 60 sets out the process for conducting a criminal history check to determine whether a person is disqualified from becoming or continuing as a member of the Treaty Institute Council or a senior executive officer:

- a relevant official for the office may ask the Commissioner of Police for a written report about the criminal history of the person;
- this request can only be made if written consent has been given by the person;
- the Commissioner of Police must comply with this request, in so far as they have this information in their possession or have access to it.

Clause 61 provides if a Treaty Institute Council member or senior executive officer is charged with or convicted of an indictable offence during their term of appointment, they must immediately after convicted or charged, give notice, which includes the prescribed information in subclause (3), to the relevant official unless they have a reasonable excuse.

Clause 62 sets out the requirements for the management and confidentiality of criminal history information.

Subclause (1) provides the clause applies to the Minister, a member of the Treaty Institute Council, senior executive officer, a member of staff or contractor of the Treaty Institute, or a public service employee performing functions or relating to the administration of this part and who in that capacity, has acquired or access to criminal history information.

Subclause (2) requires the person not to disclosure the criminal history information to anyone else, or use the information, other than as is provided for under this section and provides a penalty for a breach of this section.

Subclause (3) allows the person to disclose or use the criminal history information to the extent necessary to perform the person's functions under or relating to this Bill, or otherwise as required or permitted under this Bill or another law, or with consent of the person to whom the criminal history information relates.

Subclause (4) states a person who possesses a report under clause 60 or a notice given under clause 61 must ensure the report or notice is destroyed as soon as practicable after it is no longer required for the purpose for which it was given. Subclause (5) provides that this applies despite the *Public Records Act 2002*.

Subdivision 4 Disclosure of confidential information

Clause 63 sets out the requirements to preserve the confidentiality of information.

Subclause (1) provides the clause applies to a Minister, a member of the Treaty Institute Council, a senior executive officer, a member of staff or a contractor of the Treaty Institute Council or a public service employee performing functions under or relating to the administration of this part who in that capacity, has acquired or access toconfidential information.

Subclause (2) requires a person not to disclosure the confidential information to anyone else, or use the information, other than as is provided for under this clause. The maximum penalty for failing to comply with this requirement is 100 penalty units.

Subclause (3) permits a person to disclose or use confidential information in certain circumstances.

Subclause (4) provides 'disclose' includes give access to, and 'information' includes a document.

Part 3 Truth-telling and Healing Inquiry

Division 1 Establishment, terms of reference and functions

Clause 64 requires the Minister to establish the Inquiry within 3 months of the commencement of the Bill. The clause further provides the term of the Inquiry must not be more than 3 years, unless extended by the Minister either by request from the Inquiry or on the Minister's own

initiative. The Minister must publish the notice of extension on the department's website if the Minister extends the term of the Inquiry. The term of the Inquiry reflects the TAC Report Recommendation 14.

Clause 65 requires the Minister to prepare the terms of reference for the Inquiry within 1 month after the commencement of the Bill, and give them to the chief executive who must publish them on the department's website as soon as practicable after receiving them. The Minister must give the terms of reference to the Inquiry as soon as practicable after the Inquiry is established. In developing the terms of reference, the Minister may consult with any person the Minister considers has the skills, knowledge or experience relevant to the functions of the Inquiry, in particular, Aboriginal and Torres Strait Islander peoples. The terms of reference must include the matters that the Inquiry must have regard to in performing its functions, other than those matters already set out in the Bill.

Clause 66 provides the functions of the Inquiry are to:

- inquire into and document the impacts and effects of colonisation on Aboriginal and Torres Strait Islander peoples by holding truth-telling sessions, truth-telling hearings, or inviting a person to give documents and other things to the Inquiry;
- conduct research into and promote community awareness and understanding of the impacts and effects of colonisation on: Aboriginal peoples, Aboriginal law and Aboriginal tradition; and Torres Strait Islander peoples, Torres Strait Islander law and Ailan Kastom; and the general public's shared understanding of the history of Queensland;
- provide advice and make recommendations to the Minister consistent with the Inquiry's terms of reference;
- undertake any other function in accordance with the Inquiry's terms of reference.

The above functions are consistent with the TAC Report Recommendation 13.

Division 2 Membership

Clause 67 sets out the requirements for the Inquiry membership of 5 members, who are appointed by the Governor in Council on the recommendation of the Minister:

- the majority must be Aboriginal or Torres Strait Islander persons (with at least 1 Aboriginal person and 1 Torres Strait Islander person);
- at least 1 member must be a lawyer of at least 5 years standing who the Minister considers has experience relevant to the Inquiry;
- must reflect the gender diversity of Queensland.

Subclause (4) allows the Minister to recommend a person to the Governor in Council only if the Minister is satisfied the person has suitable experience and standing in the Aboriginal community or Torres Strait Islander community.

Subclause (5) clarifies members are appointed under this Bill and not the *Public Sector Act 2022*, to ensure a level of independence for the Inquiry members when conducting the Inquiry.

The membership of the Inquiry reflects the TAC Report Recommendation 15.

Clause 68 provides members of the Inquiry hold office for the term stated in their instrument of appointment, but that term must not be longer than the period for which the Inquiry is established. A member may be reappointed.

Clause 69 provides members of the Inquiry are to be paid remuneration and allowances decided by the Governor in Council, and that any terms and conditions, not provided for in this Bill, are to be decided by the Governor in Council.

Clause 70 requires the Minister to appoint a member who is an Aboriginal or Torres Strait Islander person as chairperson of the Inquiry. The chairperson is responsible for the day-to-day management of the Inquiry's functions, and may delegate a function or responsibility of the office to another member of the Inquiry.

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

Division 3 Conduct of inquiries

Subdivision 1 General

Clause 72 sets out the procedural requirements for the Inquiry in performing its functions:

- it must observe natural justice, and is not bound by the rules of evidence;
- it must conduct a truth-telling session or hearing in a culturally appropriate manner having regard to Aboriginal law and Aboriginal tradition, and Torres Strait Islander law and Ailan Kastom;
- it must conduct a truth-telling session or hearing in a way that recognises the stress and psychological trauma that may be experienced by a person during the process;
- it may inform itself in any way it considers appropriate and decide the procedures to be followed.

Subclause (2)(a) requires the Inquiry to make guidelines about procedures for recognising, supporting, preventing, reducing or mitigating stress or psychological trauma associated with a person giving testimony or making a submission to a truth-telling session or hearing.

Subclause (2)(b) allows the Inquiry to make guidelines about procedures for: attendance at a truth-telling session or hearing; giving documents or other things to the Inquiry; collecting and sharing documents or other things given to the Inquiry; and any other matter relevant to the Inquiry's functions.

Subclause (3) requires any guidelines made to be published on the Inquiry's website.

Clause 73 provides in performing its functions (other than a truth-telling hearing), the Inquiry may be represented by one or more members of the Inquiry. All members must attend a truth-telling hearing. Any document or other thing given to a member of the Inquiry representing the Inquiry is taken to be given to the Inquiry.

Clause 74 requires the Inquiry to hold truth-telling sessions or hearings in public, however the Inquiry may hold (on its own initiative or if asked by a person) a session or hearing in private if satisfied it is appropriate to do so and give a direction about the persons who may attend.

This recognises the potentially sensitive and confidential nature of the information or documents that may be shared with the Inquiry.

Clause 75 requires the Inquiry to keep a record of each truth-telling session or hearing. However, the Inquiry is not required to record a document or other thing given by a person if that person requests this (although this does not apply to a chief executive officer of a government entity).

Clause 76 provides the Inquiry is not affected by a change in its membership. This allows the Inquiry to continue regardless of a membership change.

Clause 77 provides a member of the Inquiry has, in performing the member's functions at a truth-telling session or hearing, the same immunity and protection as a Supreme Court judge.

Subclause (2) provides a lawyer or another person appearing for someone else at a truth-telling session or hearing has the same immunity and protection as a barrister appearing for a party in a proceeding in the Supreme Court.

Subclause (3) provides a person appearing at a truth-telling session or hearing has the same protection and immunity as a witness in a proceeding in the Supreme Court.

Subdivision 2 Truth-telling sessions

Clause 78 provides the Inquiry may hold a truth-telling session and invite a person to attend to make an oral submission about a person's experience that relates to the history of Aboriginal or Torres Strait Islander peoples or another matter the Inquiry considers will assist them. The person is not required to attend the truth-telling session.

Subclause (4) and (5) provide if the chairperson of the Inquiry is present, they must preside at the truth-telling session. If they are not present, the Inquiry is to choose a member to preside at the session.

Anyone can be invited to attend a truth-telling session and attendance is voluntary or by invitation. This includes, for example, government entities, non-government agencies, private individuals, corporations, universities, historians. An invited person is not obliged to attend a truth-telling session or make a submission, however a chief executive of a government entity who declines to attend may be given an attendance notice under clause 85. A session may be held in any format as determined by the Inquiry, including community events, festivals, meetings, gatherings.

Subdivision 3 Giving documents and other things to Inquiry

Clause 79 provides under this subdivision a government entity holds the document or other thing (materials) when the entity, or an officer of the entity, has possession or control of the materials; or is entitled to access the materials.

Clause 80 provides the Inquiry may by notice invite an entity, which is open to anyone such as a person, non-government organisation or government entity, to give materials or make a written submission that the entity considers may assist the Inquiry in performing its functions, subject to conditions stipulated by the person (excluding a government entity).

Subclause (3) requires the notice to a chief executive officer of a government entity to describe the materials or matter for submission in sufficient detail to enable the chief executive to identify whether they are able to make a submission or give the materials to the Inquiry.

Clause 81 requires a person in their capacity as the chief executive officer of a government entity (person), through a written notice (production notice), to: give the Inquiry materials or make a submission that the Inquiry considers will assist it in performing its functions. The production notice can only be issued if the person received an invitation under clause 80 and either: did not give materials or make a submission; or provided materials or made a submission, however the Inquiry considers that the government entity holds other materials that will assist the Inquiry. It is noted that local government is not considered a 'government entity' under the Bill as only the State Government has agreed to compulsion powers directed towards the participation of and production of information or documents (as per the Queensland Government Response to the TAC Report).

Subclause (3) requires the production notice to describe the materials, matter for submission or assistance in sufficient detail to enable the person to identify if the government entity holds the materials, is able to make the submission or can assist the Inquiry.

Subclause (4) provides the person must comply with the Inquiry's production notice, subject to the exclusions set out in clause 83.

Subclause (5) provides within a reasonable time after receiving the production notice, the person must give the Inquiry a notice stating:

(a) for a production notice regarding materials:

- whether the entity holds the materials; and
- if they do have the materials, whether they will provide them to the Inquiry or reasons why they will not be provided to the Inquiry.

(b) for a production notice regarding a written submission:

- whether a submission will be made to the Inquiry; or
- reasons why a submission will not be made.

Clause 82 requires a person to consider a production notice in accordance with these principles:

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

Clause 83 sets out the reasons a person is not required to comply with a production notice given under clause 81(2)(a) or 81(2)(b):

- the entity does not hold the materials (for productions notices about materials);
- the materials contains personal information. However, this does not apply if the entity can give the materials without disclosing the personal information;
- the materials is subject to legal professional privilege or public interest immunity;
- the materials may disclose commercial in confidence information;
- the materials could reasonably be expected to prejudice the investigation of an offence of contravention of the law, under an investigation under the *Coroners Act 2003* or the conduct of a civil or criminal proceeding before a court or tribunal;

- the submission would disclose materials that are not required to be given under paragraph (a)(ii) to (vi); or
- disclosing the materials or making the submission would be an offence under another Act.

Subdivision 4 Truth-telling hearings

Clause 84 provides the Inquiry may hold a truth-telling hearing and the chairperson of the Inquiry is to preside at the hearing.

Clause 85 provides the process for the Inquiry to conduct a truth-telling hearing. It applies if a person declines a request to attend a truth-telling session under clause 78(2); or attended a truth-telling session and the Inquiry requires additional testimony or oral submission; or a person does not respond to a production notice or does not provide the materials or submission requested in a production notice.

Subclause (3) allows the Inquiry to require (through an attendance notice) a person to attend a truth-telling hearing at a stated time to make an oral submission or explain why they do not intend to give the materials or make a submission requested under a production notice.

Subclause (4) provides the attendance notice under subclause (3)(b) must provide details of the matters to be included in the submission.

Clause 86 requires a person to:

- attend or continue to attend the truth-telling hearing as required by the chairperson of the Inquiry, without a reasonable excuse;
- take an oath, or make an affirmation, when required by the chairperson of the Inquiry;
- not fail, without reasonable excuse, to answer a question the person is required to answer by a member of the Inquiry. It is a reasonable excuse for an individual to refuse to answer a question, or make an oral submission on the ground that it might tend to incriminate the person or make them liable to penalty.

Division 4 Reporting requirements

Clause 87 requires the Inquiry to keep the Minister reasonably informed about the functions performed and activities carried out by the Inquiry.

Clause 88 requires the Inquiry to provide the Minister a written report on the Inquiry's findings including any relevant or appropriate recommendations before the term of the Inquiry ends. The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report. The Minister must, as soon as practicable after tabling the report, prepare a response to the report and give it to the Premier.

Division 5 Other matters

Clause 89 provides a member of the Inquiry does not incur civil liability for performing a function or exercising a power under this part, if the conduct is engaged in good faith and without negligence.

Clause 90 requires the chief executive to, as soon as practicable after the Inquiry is established, enter into an arrangement with the chairperson of the Inquiry for the services of officers or employees of the department to be made available to the Inquiry or other resources or facilities of the department. Officers whose services are made available continue to be employees of the department on the same terms and conditions applying before the services were made available.

Clause 91 provides persons who is or has been the Minister, a member of the Inquiry or a public service employee performing functions under this part who have obtained confidential information in that capacity, must not disclose the information to anyone else other than under this clause.

Subclause (3) allows a person to disclose confidential information to another person:

- where permitted under the Bill or where it is necessary to perform the person's functions under the Bill;
- is otherwise required or permitted under another law;
- with the consent of the person to whom the information relates;
- if it does not identify the person to whom the information relates or does not allow the identity of the person to be reasonably ascertained;
- it is in compliance with a process requiring the confidential information to be given to a court or tribunal.

Clause 92 requires a person not give information under this part to the Inquiry the person knows is false or misleading in a material particular.

Subclause (1) does not apply to the person if the person, when giving the information in a document:

- tells the Inquiry, to the best of the person's ability, how the document is false or misleading; and
- if the person has, or can reasonably obtain, the correct information—gives the correct information.

Clause 93 provides the *Recording of Evidence Act 1962* does not apply to a truth-telling session or hearing. This is to ensure that the Inquiry controls the recording of information and for confidential and personal information to not be recorded.

Part 4 Miscellaneous

Clause 94 requires the Minister, within 5 years of the commencement of the Bill, to review the operation and efficacy of the Bill, and that the review must be conducted by an appropriately qualified entity appointed by the Minister. Before appointing the entity, the Minister is required to consult with the Treaty Institute. This is consistent with the TAC Report Recommendation 11. The Minister must table a report in Parliament on the outcome of the review as soon as practical after the review is completed.

Clause 95 provides regulation making powers by the Governor in Council under this Bill.

Part 5 Amendment of legislation

Division 1 Amendment of this Act

Clause 96 provides this division amends this Bill.

Clause 97 amends the long title of the Bill.

Division 2 Amendment of Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984

Clause 98 provides this division amends the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (JLOM Act).

Clause 99 omits section 3, which provided for the management of property of an Aboriginal person. This change removes outdated legislation and supports the Government's policy of reframing the relationship with Aboriginal and Torres Strait Islander peoples.

Clause 100 amends section 4 (Definitions) to remove the definition of and '*corporation'* as a consequence of the repeal of sections 5 to 7 of the JLOM Act.

Clause 101 omits sections 5, 6 and 7, which provided for the 'Aboriginal and Islander Affairs Corporation' and preserved the corporations under earlier Acts as the provisions are redundant and the corporations are no longer operative.

Clause 102 amends section 53(1)(a) to add 'person' after 'Islander'.

Clause 103 amends the heading of Part 7 to omit reference to 'Aborigines' which is considered offensive and outdated.

Clause 104 amends section 56 to remove outdated language ('Aborigine') and replace with 'Aboriginal person' or 'Aboriginal peoples'. It also amends 'Torres Strait Islanders' to 'Torres Strait Islander person' or Torres Strait Islander peoples'.

Clause 105 omits sections 57, 58 and 59, removing provisions for the acceptance and management of the savings of Aboriginal and Torres Strait Islander peoples. This amendment removes outdated and redundant provisions which are no longer supported by Government policy.

Clause 106 amends the heading of, and sub-sections within, section 60 to remove outdated language ('Aborigine') and replace with 'Aboriginal person' or 'Aboriginal peoples'. It also amends 'Torres Strait Islanders' to 'Torres Strait Islander person' or Torres Strait Islander peoples'.

Clause 107 amends the heading of, and sub-sections within, section 61 to remove outdated language ('Aborigine') and replace with 'Aboriginal person' or 'Aboriginal peoples'. It also amends 'Torres Strait Islanders' to 'Torres Strait Islander person' or Torres Strait Islander peoples'.

Clause 108 amends the heading of, and sub-sections within, section 62 to remove outdated language (‘Aborigine’) and replace with ‘Aboriginal person’ or ‘Aboriginal peoples’. It also amends ‘Torres Strait Islanders’ to ‘Torres Strait Islander person’ or Torres Strait Islander peoples’.

Clause 109 amends the heading of, and sub-sections within, section 63 to remove outdated language (‘Aborigine’) and replace with ‘Aboriginal person’ or ‘Aboriginal peoples’. It also amends ‘Torres Strait Islanders’ to ‘Torres Strait Islander person’ or Torres Strait Islander peoples’.

Clause 110 amends section 71(2) to remove outdated language (‘Aborigine’) and replace with ‘Aboriginal peoples’. It also amends ‘Torres Strait Islanders’ to ‘Torres Strait Islander peoples’.

Division 3 Amendment of Fire and Emergency Services Act 1990

Clause 111 provides this division amends the *Fire and Emergency Services Act 1990.*

Clause 112 amends section 105 (Definitions) to omit ‘Aboriginal and Islander Affairs Corporation’, consequential to the amendments made by clauses 96 and 97 to remove it from the JLOM Act.

Schedule 1 Dictionary

Schedule 1 defines particular words used in the Bill.