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Path to Treaty Act 2023: Truth-telling and Healing Inquiry

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Overview

1. Path to Treaty – where are we now?
2. Objectives of the *Path to Treaty Act*
 - entities established under the Act and pathway for Inquiry
3. Truth-telling and Healing Inquiry
 - term, functions and scope of the Inquiry
4. Legal framework of the Inquiry
 - legal status; guidelines and procedures – s 72(1) and s 72(2)
5. ‘Voluntary’ processes of the Inquiry
 - oral evidence, submissions, production of documents – s 78, s80

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Overview

6. ‘Compulsory’ processes of the Inquiry
 - production notices and attendance notices – s 80, 81(2) and 82
 - oral evidence and duties of Directors-General and other CEOs
7. Practical considerations for Queensland Government agencies
8. Potential issues requiring advice
9. Case Study: Yoorrook Justice Commission (Vic)
10. Questions.

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Path to Treaty in Queensland: History of advancement and progress

- **2021:** Community briefings commence culminating in Treaty Advancement Committee report
- **2022:** Path to Treaty office established, Interim Truth and Treaty Body members appointed
- **2023:** Path to Treaty Bill 2023 introduced in Parliament, later passed in May; Yarning sessions commenced for Inquiry and Institute
- **2024:** Community Consultation Feedback Report published.

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Path to Treaty in Queensland: History of advancement and progress

Recent developments – 26 April 2024

- Path to Treaty Act 2023 is now in force
- First Nations Treaty Institute (FNTI) established and Council members appointed
- Inquiry members announced
- **Inquiry to commence 1 July 2024.**

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Path to Treaty Act 2023

The Path to Treaty Act 2023 → **First Nations Treaty Institute and Truth-telling and Healing Inquiry**

- Entities established under the Act
 - 1. First Nations Treaty Institute:**
 - statutory body independent from Government
 - supports Aboriginal and Torres Strait Islander groups to prepare for treaty negotiations
 - co-develop treaty making framework with the Queensland Government and progressing actions from Inquiry

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Path to Treaty Act 2023

- ITTB → preliminary functions of the institute prior to proclamation
- Now → First Nations Treaty Institute

2. Truth-telling and Healing Inquiry

- independent board of inquiry
- inquiring into impacts and effects of colonisation in Queensland.

26 April 2024: FNTI established and Inquiry members announced

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Truth-telling and Healing Inquiry

- Term/timeframes
- Functions and scope of Inquiry
- s 6 of the Act: principles of the Inquiry
- How broad is the scope – historical vs contemporary?
- Key players – who will be involved.

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Legal framework of the Inquiry

- Legal status
 - not a commission of inquiry
 - bespoke board of inquiry
- Guidelines and procedures for the Inquiry – s 72(1)
 - natural justice
 - not bound by rules of evidence
 - cultural appropriateness
 - flexibility.

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Legal framework of the Inquiry

- Guidelines – s 72(2)
 - **Must** make guidelines about procedures for:
 - **recognising** whether a person is experiencing stress or psychological trauma
 - **supporting** a person who may experience stress or psychological trauma
 - **preventing, reducing or mitigating** stress or psychological trauma experienced by a person associated with giving testimony or making a submission to a truth-telling session or truth-telling hearing

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Legal framework of the Inquiry

- **May** make guidelines about procedures for:
 - attendance at a truth-telling session or truth-telling hearing
 - giving documents and making submissions to the Inquiry
 - collecting and sharing documents given to the Inquiry.

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'Voluntary' processes of the Inquiry

- Truth-telling sessions – s 78
 - invitation to individuals: share their stories voluntarily in either public or private sessions
- Production of documents – s 80
 - entities invited to provide documents or submissions that aid the Inquiry
 - may be given to Inquiry with conditions, e.g. names or events in document removed
 - condition **must** be complied with by Inquiry
 - **unless person is acting in capacity as CEO.**

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'Compulsory' processes of the Inquiry

- Production notices – s 81
 - CEO must comply
- Principles for dealing with production notices – s 82
 - must have regard to principles in s 6
 - government transparency and accountable government
- Grounds for non-compliance – s 83
 - government entity does not hold document
 - would disclose personal information
 - legal professional privilege and public interest immunity
 - commercial-in-confidence information

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'Compulsory' processes of the Inquiry

- prejudice criminal investigation, coronial inquiry, or conduct of civil or criminal proceeding
- disclosure would be an offence under another Act or law
- Attendance notices – s 85 and s 86
 - may compel CEOs to attend truth-telling hearing
 - failure to attend is an offence, unless reasonable excuse
- 'Reasonable excuse'
 - self incrimination is an express 'reasonable excuse'.




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Practical considerations

- Status and preparation
 - Due to commence 1 July 2024
 - TOR not yet published
 - Preparation work (Path to Treaty office within Departments)
 - DTATSIPCA to play a whole of Government coordination role
- Document production
 - Agency response
 - Queensland State Archives, Queensland State Library, Agency records, and locating records
 - Preparation and co-ordination.


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Practical considerations

- Role of DGs and other CEOs
 - hearing attendance can be compelled
 - non-adversarial approach
 - briefing requirements
- Staff welfare
 - support for staff participating in Inquiry
 - accommodations and sensitivity
 - employer obligations.

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Potential legal issues

- Compliance with the Act
- Role of CEOs
- Document production
 - grounds for non-compliance (s 83)
- Human rights considerations.

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Case Study: Yoorrook Justice Commission (VIC)

- **May 2021:** Yoorrook Justice Commission established to support treaty advancement
- **August 2022:** Treaty Authority and Other Treaty Elements Act was enacted
- **Second half of 2022:** Inquiry commenced, issue papers published inviting submissions
- Ongoing...



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Case Study: Yoorrook Justice Commission (VIC) of Truth-telling and Healing Inquiry (QLD)

Differences

- **Yoorrook:** established by letters patent under *Inquiries Act 2014* ;
- **TTHI:** bespoke 'board of inquiry' as opposed to traditional *Commissions of Inquiry Act 1950* commission
- **Yoorrook:** historical 'Systemic Injustice' and ongoing 'Systemic Injustice'; **TTHI:** 'impacts and effects of colonisation'
- **Yoorrook:** Ministers are in the remit of the inquiry; **TTHI:** CEO level.



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Case Study: Yoorrook Justice Commission (VIC) of Truth-telling and Healing Inquiry (QLD)

Similarities

- Both intended to run for three years
- Independent from government
- Both have power to compel government agencies to produce documents and give evidence before inquiry
- Ability to examine the **full role** of government departments, bodies and agencies in colonisation is within inquiry's remit.



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Case Study: Yoorrook Justice Commission (VIC) of Truth-telling and Healing Inquiry (QLD)

Examples of possible inquiry requests

- General requests that may apply to multiple agencies:
 - example: provide to the Inquiry relevant documentation and information about the theft, misappropriation and destruction of cultural knowledge and property
- Agency specific requests:
 - example: provide to the Inquiry relevant documentation and information about unfair policies and practices relating to policing, youth and criminal justice, incarceration, detention and the broader legal system.

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Case Study: Yoorrook Justice Commission (VIC)

- Issue: Child protection and criminal justice system
- Yoorrook received evidence through several different ways such as submissions, hearings, roundtables and visits
- 33 submissions from organisations and other experts
- 88 submissions from individuals which discussed their personal experiences with one/both systems
- 27 days of hearings, evidence from 84 witnesses, across Victoria

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Case Study: Yoorrook Justice Commission (VIC)

- 12 roundtables with experts across Victoria, including visits to adult and youth prisons
- 4000+ documents produced by the Victorian Government
- August 2023: second interim report handed down by the Commission.



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Yoorrook Justice Commission (VIC)

Feedback from VGSO

- Most complex inquiry
- Central coordination, but individual agency 'response teams'
- Substantial legal team (counsel, VGSO lawyers, external firm)
- Structured document production process, authorisation protocol
- Legal teams to prepare Ministers/compelled witnesses.



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Resources

1. Get ready for the Inquiry
 - [Get ready for Path to Treaty / For government / Queensland Government](#)
 - [Enquiries: truth telling and healing establishment@dssatsip.qld.gov.au](mailto:truth telling and healing establishment@dssatsip.qld.gov.au)
2. Institute and Inquiry appointments
 - [Members - 1 July 2024](#)
3. Victorian Government case study (examples from Yoorrook)
 - [Examples of possible Inquiry requests for information](#)
4. Yoorrook Justice Commission
 1. <https://yoorrookjusticecommission.org.au/>
 2. [Yoorrook: Public Hearings](#)
 3. [Yoorrook: Document Production Notice example](#)

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Questions?

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