

PRACTICE DIRECTION 1 - WURREK TYERRANG (PUBLIC HEARINGS)

INTRODUCTION

1. This Practice Direction sets out guidance about and procedures for conducting and participating in wurrek tyerrang (public hearings) held by Yoorrook.
2. Consistent with Yoorrook's published strategic priorities, Yoorrook will first hear from Elders in the period to 30 June 2022. An initial group of Elders will share their truth at wurrek tyerrang. A small number of other witnesses may also be invited to contextualise Yoorrook's mandate (**Elders' wurrek tyerrang**).
3. After this date, all Traditional Owners and First Peoples in Victoria will have the opportunity to tell their truth, including by participating in wurrek tyerrang to be scheduled. The broader Victorian community will also be invited to participate.
4. This Practice Direction is to be read together with Yoorrook's General Guidelines on Information Gathering and Pil'kneango Mirnk.
5. This Practice Direction is issued under, and should be read in conjunction with, the Inquiries Act 2014 (Vic) (**Act**) and the Terms of Reference contained in the Letters Patent establishing Yoorrook dated 12 May 2021 (**Letters Patent**).
6. This Practice Direction and any other practice directions published by Yoorrook may be varied, changed or replaced from time to time.
7. Yoorrook may also depart from this Practice Direction at any time if it considers it appropriate, including having regard to cultural considerations.

Wurrek tyerrang -
Wergala word for
'speaking together'.
This is what
Yoorrook will convene
as public hearings.

Pil'kneango mirnk -
Djab Wurrung for
'open eyes'. This is
what is often referred
to as 'evidence'.

CONDUCT OF WURREK TYERRANG

8. Given the ongoing COVID-19 pandemic, until further notice, wurrek tyerrang will:
 - (a) be open to (in addition to the Commissioners) the following individuals only to attend in person:
 - (i) witnesses and their support persons (including any legal representative);
 - (ii) Counsel Assisting Yoorrook (Counsel Assisting);
 - (iii) Solicitors Assisting Yoorrook (Solicitors Assisting);
 - (iv) Yoorrook staff supporting the conduct of the wurrek tyerrang;
 - (v) any other person for whom leave to attend or appear has been granted (together with any independent legal representatives authorised in accordance with paragraphs 45 to 46); and
 - (b) otherwise be live streamed on Yoorrook's website to anyone wishing to view the wurrek tyerrang remotely.
9. Subject to any restricted or closed hearing orders (see paragraphs 30 to 35 below) or restricted publication orders (see paragraphs 36 to 41 below), wurrek tyerrang will be video recorded, with transcripts produced and published.
10. Subject to the provisions of the Act, the conduct of wurrek tyerrang will be at the discretion of the Chairperson.

EMBEDDED CULTURAL PROTOCOL

11. Yoorrook will centre First Peoples' ways of knowing, being and doing by embedding cultural protocol into the conduct of wurrek tyerrang, including:
 - (a) Welcomes to Country;
 - (b) Traditional Owner acknowledgements;
 - (c) ceremonial elements (for example, smoking ceremonies);
 - (d) use of Traditional Owner languages;
 - (e) providing First Peoples-specific supports, including holistic social and emotional wellbeing support;
 - (f) dance, song and artwork; and
 - (g) display of archival material.
12. Yoorrook will consult regularly with First Peoples participants in determining appropriate cultural protocol and arrangements for the conduct of wurrek tyerrang.
13. Consistently with its Letters Patent, Yoorrook will uphold the sovereignty of First Peoples over their knowledge and stories and how the information they provide should be treated by both Yoorrook and in future archives. Yoorrook will ensure information and data protection over First Peoples' knowledge and information.
14. For more information, see: Information sheet 4: Indigenous Data Sovereignty and Data Governance.

WITNESSES

Identification of witnesses

15. Having regard to its Terms of Reference and priority focuses from time to time, Yoorrook will identify and directly contact witnesses to participate at wurrek tyerrang, including, where appropriate, through any legal representatives notified to Yoorrook. This includes:
 - (a) First Peoples' witnesses, including Elders;
 - (b) representatives of the State and relevant agencies;
 - (c) representatives of community organisations; and
 - (d) members of the broader Victorian community.
16. Persons who have not been asked by Yoorrook to participate at wurrek tyerrang or share their pil'kneango mirnk may themselves contact Yoorrook to express their interest in participating in these processes. This should be done by email to legal@yoorrook.org.au.
17. Yoorrook will determine which witnesses are to appear, the order in which witnesses appear, and the methods through which they will share their pil'kneango mirnk (for example, either individually or in a group setting).

Truth declarations

18. The Letters Patent direct Yoorrook to recognise First Peoples' cultural and legal practices of story-telling and witnessing as legitimate and valid sources of evidence. Therefore, all First Peoples' witnesses called at wurrek tyerrang will be invited to make a culturally appropriate declaration to tell the truth (truth declaration), which may include an oath or affirmation.
19. Witnesses who are not First Peoples will be invited to make an oath or affirmation.
20. If any witness does not make a truth declaration or oath or affirmation, Yoorrook may, at the discretion of the Chairperson, nonetheless elect to take pil'kneango mirnk from that witness.

Balert keetyarra (witness statements)

21. In the case of First Peoples witnesses invited to participate in a wurrek tyerrang, Yoorrook's Counsel and Solicitors Assisting team will usually work with them (and any authorised independent legal representative) to:
 - (a) (where necessary) prepare a balert keetyarra; and/or
 - (b) assemble any other material they can speak to and/or share with Yoorrook as part of their pil'kneango mirnk.
22. In the case of other witnesses:
 - (a) the format or rubric of the proposed balert keetyarra will be provided, and the balert keetyarra must follow and address each topic and issue included in that format; and
 - (b) their balert keetyarra will be prepared with the assistance of their legal representative (if they are so represented).

Balert keetyarra - Wathaurong phrase for 'strong talk'. This is what is often referred to as a 'witness statement'.

PIL'KNEANGO MIRNK

Documents for wurrek tyerrang

23. Counsel Assisting will determine which documents are to be displayed and/or tendered as pil'kneango mirnk and when. In the case of First Peoples witnesses, they will do so in consultation with, and after having received the informed consent of, the individual to whom the documents relate.
24. Any legal representatives of persons appearing as witnesses in wurrek tyerrang that have been:
 - (a) nominated in any application for leave to appear approved by Yoorrook; or
 - (b) otherwise authorised in accordance with the processes in paragraphs 45 and 46,may be given confidential access to documents that may be tendered as pil'kneango mirnk before the commencement of the relevant session.
25. If a party seeks to have a document displayed or tendered at a wurrek tyerrang (with the exception of exhibits to any balert keetyarra), the process is that:
 - (a) they must notify Solicitors or Counsel Assisting that they wish to have the document placed before the wurrek tyerrang by providing a copy of the document to the Solicitor Assisting team within a reasonable time before their appearance; and
 - (b) Counsel Assisting will decide whether or not the documents are to be tendered.
26. Documents will be collected, handled, stored and published by Yoorrook in accordance with:
 - (a) relevant restricted publication order(s) (including for information regarded as culturally sensitive) (see paragraphs 36 to 41 below); and
 - (b) Yoorrook's Indigenous Data Sovereignty policy as published from time to time.

Access to and publication of pil'kneango mirnk from wurrek tyerrang

27. Subject to any restricted or closed hearing orders (see paragraphs 30 to 35 below) or restricted publication orders (see paragraphs 36 to 41 below), Yoorrook will apply the following procedures to pil'kneango mirnk given at wurrek tyerrang:
 - (a) transcripts of pil'kneango mirnk will be uploaded onto Yoorrook's website as soon as they are available;
 - (b) balert keetyarra will be available on Yoorrook's website as soon as practicable after the witness has given pil'kneango mirnk;
 - (c) video recordings of wurrek tyerrang will be available on Yoorrook's website as soon as practicable after its conclusion; and
 - (d) documents received into pil'kneango mirnk will be available on Yoorrook's website as soon as practicable after the document has been tendered.

MECHANISMS TO PROTECT WITNESSES AND PIL'KNEANGO MIRNK

28. Consistently with its Letters Patent, Yoorrook is committed to providing a safe, supportive and culturally appropriate forum for First Peoples to tell their truth with dignity. This includes accommodating, to the extent possible, First Peoples' choices in how they wish to participate.
29. Yoorrook is also obliged to adopt practices and approaches in the conduct of its wurrek tyerrang to minimise harm and re-traumatisation for First Peoples.
30. To that end, there are several mechanisms that Yoorrook will use if and when necessary or appropriate to protect witnesses and pil'kneango mirnk.
31. These mechanisms are in addition to and do not limit the application of Yoorrook's Indigenous Data Sovereignty protocols, principles and practices.

Restricted or 'closed' wurrek tyerrang orders

32. In some circumstances, it may be necessary or appropriate for part or all of a witness' pil'kneango mirnk to be provided in a restricted or 'closed' wurrek tyerrang, in accordance with section 24 of the Act.
33. A person scheduled to appear as a witness at a wurrek tyerrang may seek a restricted or closed hearing order in respect of any pil'kneango mirnk to be given.
34. In the case of First Peoples' witnesses, Yoorrook will work with a witness and any authorised independent legal representative in advance of the wurrek tyerrang to identify any sensitive subject matter which might warrant the making of a restricted or closed hearing order.
35. In the case of all other witnesses, notice of any such application must be given to Solicitors Assisting as soon as is practicable once the basis for the application is identified (and at least seven days prior to the relevant wurrek tyerrang date (noting that Yoorrook may extend or abridge this time as is deemed necessary or practicable)). The application must be made in writing, sent to legal@yoorrook.org.au, and be accompanied by a short-written submission (no longer than five A4 pages, 12-point font) setting out the basis upon which each claim is made. The application must address the matters (where relevant) identified in section 24 of the Act, including the precise parts of the pil'kneango mirnk to which the application relates and the reason(s) for the application, for example, the sensitive nature and subject matter of the information (including on cultural grounds), prejudice or hardship that might be caused to any person including harm to their safety, or any other appropriate reason.
36. Given the limited number of people in attendance in wurrek tyerrang until further notice (see paragraph 8 above), a restricted or closed hearing order may in practice involve only:
 - (a) temporarily pausing Yoorrook's live stream when the relevant matter is addressed (which will otherwise run on a slight delay);
 - (b) omitting the relevant evidence from published transcripts and video recordings; and
 - (c) redacting or omitting the relevant information from publication and any related documentary exhibits.
37. Should Yoorrook make a restricted or closed hearing order, Yoorrook will notify parties and the public in accordance with section 24(2) of the Act, including by posting a copy of any order on its website.

Restricted publication orders

38. In some circumstances, it may be necessary or appropriate to prohibit or restrict the publication of certain information or pil'kneango mirnk produced in a wurrek tyerrang in accordance with section 26 of the Act, for example, for reasons of personal or cultural sensitivity or having regard to a witness' entitlement to Indigenous Data Sovereignty protections.
39. In the case of First Peoples' witnesses, Yoorrook will work with the witness and any authorised independent legal representative in advance of the wurrek tyerrang to identify any information which might be prohibited or restricted from publication.

40. In the case of all other witnesses, a person appearing as a witness at a wurrek tyerrang may seek a restricted publication order in respect of any pil'kneango mirnk to be given, or already given. A restricted publication order can be made with or without an accompanying restricted or closed hearing order.
41. Notice of any such application must be given to Solicitors Assisting as soon as is practicable once the basis for the application is identified (and at least seven days prior to the relevant wurrek tyerrang date (noting that Yoorrook may extend or abridge this time as is deemed necessary or practicable)). The application must be made in writing, sent to legal@yoorrook.org.au, and be accompanied by a short-written submission (no longer than five A4 pages, 12-point font) setting out the basis upon which each claim is made. The application must address the matters (where relevant) identified in section 26 of the Act, including the precise parts of the pil'kneango mirnk to which the application relates and the reason(s) for the application, for example, the sensitive nature and subject matter of the information (including on cultural grounds), prejudice or hardship might be caused to any person including harm to their safety, or any other appropriate reason.
42. A person served with any Notice to Produce relevant to the pil'kneango mirnk to be given at a wurrek tyerrang who wishes to make an application seeking a restricted publication order should make the application at the time of production.
43. Should Yoorrook make a restricted publication order, Yoorrook will notify parties and the public in accordance with section 26(3) of the Act, including by posting a copy of any order on its website.

Excluded person(s) orders

44. A witness or a person granted leave to appear may make an application seeking an order that a particular person or persons be excluded from a wurrek tyerrang. Upon receipt of an application, Yoorrook may make an excluded person(s) order, in accordance with section 24 of the Act.
45. Notice of any such application must be given to the Solicitors Assisting as soon as is practicable once the basis for the application is identified (and at least seven days prior to the relevant wurrek tyerrang date (noting that Yoorrook may extend or abridge this time as is deemed necessary or practicable)). The application must be made in writing prior to the date on which the witness or pil'kneango mirnk is to be heard, sent to legal@yoorrook.org.au, and be accompanied by a short-written submission (no longer than five A4 pages, 12-point font) setting out the basis upon which each claim is made. The application must address the matters (where relevant) identified in section 24 of the Act, including the precise parts of the pil'kneango mirnk to which the application relates and the reason(s) for the application, for example, the sensitive nature and subject matter of the information (including on cultural grounds), prejudice or hardship that might be caused to any person including harm to their safety, or any other appropriate reason.
46. Should Yoorrook make an excluded person(s) order, Yoorrook will notify parties and the public in accordance with section 24(2) of the Act, including by posting a copy of any order on its website.

Legal representation

47. Witnesses appearing before Yoorrook to give pil'kneango mirnk at a wurrek tyerrang may be legally represented at the wurrek tyerrang only with the prior authorisation of Yoorrook.
48. Where a legal practitioner seeks this prior authorisation:
 - (a) the legal practitioner is to inform Yoorrook in writing at least seven days prior to the witnesses' scheduled appearance;
 - (b) the legal practitioner must outline why it is necessary or appropriate that they be authorised to appear (any such submission should be brief and no longer than one to two A4 pages, 12-point font); and
 - (c) Yoorrook in its discretion may authorise the legal practitioner to appear before Yoorrook for the limited purpose of representing the witness while the witness is giving pil'kneango mirnk at the wurrek tyerrang. For the avoidance of doubt, leave will not be granted to cross-examine any individuals, agencies or organisations to which the individual witnesses' evidence relates.

EXAMINATION AND CROSS-EXAMINATION OF WITNESSES

Examination

49. In the case of all witnesses called at wurrek tyerrang, absent any prior order by the Chairperson to the contrary, evidence in chief will be led by Counsel Assisting Yoorrook.
50. If a witness is cross-examined (noting that cross-examination of First Peoples witnesses is generally not permitted as set out below), Counsel Assisting may also re-examine the witness after cross-examination concludes.
51. Examination of a witness by their own authorised independent legal representative will generally not be permitted. Any matters which such legal representative considers should be raised with the witness should be raised with Counsel Assisting for their consideration.

Cross-examination

52. As a general rule, Yoorrook will not permit cross-examination of First Peoples witnesses. This is consistent with the direction in the Letters Patent to create a safe, supportive and culturally appropriate forum for First Peoples to tell their truth, and to adopt practices and approaches in the conduct of its wurrek tyerrang to minimise harm and re-traumatisation for First Peoples.
53. Cross-examination of First Peoples witnesses will only be permitted in exceptional circumstances and at the discretion of the Chairperson (see further paragraphs 67 to 74 below). Where limited cross-examination is permitted:
 - (a) it must be culturally respectful and conducted in a sensitive manner;
 - (b) ordinarily, cross-examination that raises collateral matters going only to credit will not be permitted;
 - (c) repetitive questioning or duplication in questions will not be permitted; and
 - (d) copies of any documents proposed to be put to a witness must be provided to Counsel Assisting as soon as possible after a decision is made to seek to use the document and in all cases at least seven days prior to the date of the wurrek tyerrang at which it is proposed to be used (noting that Yoorrook may extend or abridge this time as is deemed necessary or practicable).

LEAVE TO APPEAR AT WURREK TYERRANG

When leave to appear is required

54. Applications for leave to appear are only required where a person or organisation seeks to appear at wurrek tyerrang.
55. In the case of persons:
 - (a) invited or authorised to attend the wurrek tyerrang; or
 - (b) that have received a Notice to Attend,an application for leave to appear is not required, however any proposed legal representation arrangements must be authorised by Yoorrook in advance, in accordance with the process in paragraphs 45 to 46.
56. Yoorrook will not accept applications for leave to appear at Elders' wurrek tyerrang.
57. Ordinarily Yoorrook will not grant unconditional leave to appear. Most grants of leave will be confined to the hearing of a particular inquiry in which the person has a direct or special interest. Conditions may also be imposed, such as limiting the particular topics or issues upon which the person may examine or seek leave to cross-examine a witness.

Applications for leave to appear

58. At the time the program of wurrek tyerrang is published on Yoorrook's website, Yoorrook will clarify whether it is inviting written applications for leave to appear from persons who believe that they have a direct or special interest in the subject matter of the inquiry within the scope of a particular public hearing.
59. Any applications for leave to appear, where invited, should be made on the form 'Application for Leave to Appear at the Yoorrook Justice Commission'. This form should be accompanied by a short-written submission (no longer than two A4 pages, 12-point font) setting out:
 - (a) the basis on which the application is made, having regard to the factors set out in paragraph 60; and
 - (b) any proposed legal representation arrangements.
60. The form and submission should be sent to legal@yoorrook.org.au by the date seven days prior to the relevant wurrek tyerrang date (Yoorrook may extend or abridge this time as is deemed necessary and practicable).
61. An application will either be determined on the papers in advance of each wurrek tyerrang and the outcome of the application communicated to the applicant, or Yoorrook may notify the applicant or the applicant's nominated legal representative that they will be required to appear before Yoorrook on a specified date for further consideration of the application.
62. Yoorrook will consider the following factors when determining an application for leave to appear:
 - (a) the purpose for the application, for example, to cross-examine a witness at a particular wurrek tyerrang, and the reasons why it is necessary or appropriate (see further paragraphs 67 to 74 below);
 - (b) whether the person has a direct or special interest in the subject matter of the inquiry;
 - (c) whether the person has been served with a Notice to Produce by Yoorrook;
 - (d) the likelihood that Yoorrook may make an adverse finding against the person;
 - (e) the ability of the person to assist Yoorrook in the inquiry; and
 - (f) such other matters as Yoorrook considers relevant.
63. Leave to appear before Yoorrook or otherwise attend the wurrek tyerrang may, at any time, be varied or withdrawn by Yoorrook, or made subject to altered or additional limitations or conditions.

Persons granted leave to appear

64. Where a person is granted leave to appear (or is an authorised legal representative of a witness) they are entitled to participate in the wurrek tyerrang concerning the particular inquiry (or witness), to the extent and in the manner determined by Yoorrook. The person, or the person's legal representative, may request (through Counsel Assisting):
 - (a) to have evidence tendered or heard;
 - (b) in exceptional circumstances, leave to cross-examine a witness in accordance with paragraphs 67 to 74 below; or
 - (c) to make submissions about the findings available to Yoorrook following the relevant hearing.
65. Persons who have been granted leave to appear or witnesses or their authorised legal representatives who wish to raise a procedural or legal matter or wish to make a submission about the determination of their application for leave to appear should write to the Solicitor Assisting team at legal@yoorrook.org.au as soon as possible (and at least seven days prior to the relevant wurrek tyerrang date (noting that Yoorrook may extend or abridge this time as is deemed necessary or practicable)), identifying the issue and providing a brief outline of the submission to be made.
66. Persons who have been granted leave to appear before Yoorrook may be legally represented at a hearing through their nominated representatives without the further need for that legal representative to obtain separate authorisation in accordance with paragraphs 45 to 46 .
67. Subject to paragraph 54, persons may seek leave to appear at any time if something that has occurred during a wurrek tyerrang leads them to believe that they may have a direct or special interest in the subject of inquiry.

Applications to cross-examine

68. In exceptional circumstances and at the discretion of the Chairperson, cross-examination of First Peoples witnesses may be permitted, for example, where:
- (a) Yoorrook considers it will assist in its task of investigating and reporting on the subject matter of the Terms of Reference; or
 - (b) where it is necessary having regard to natural justice considerations (and cannot be addressed via some other means, for example, subsequent submissions or redactions prior to any publication).
69. A person or organisation seeking leave to cross-examine a witness must first be granted leave to appear at the specific wurrek tyerrang in question (refer to paragraphs 56 to 61 above).
70. Applications for leave to cross-examine a witness should be made in writing and accompanied by a short-written submission (no longer than one to two A4 pages, 12-point font) setting out the basis for the application. They may accompany the application for leave to appear.
71. The application and accompanying submission should be lodged with Yoorrook by email to legal@yoorrook.org.au seven days prior to the relevant wurrek tyerrang date (Yoorrook may extend or abridge this time as is deemed necessary or practicable).
72. The application will either be determined on the papers in advance of each wurrek tyerrang and the outcome of the application communicated to the applicant (or their legal representative), or Yoorrook may require the applicant to appear before Yoorrook to further consider the application.
73. In determining whether a person has a sufficient interest to cross-examine a witness, Yoorrook may call upon the cross-examiner to identify the purpose of the cross-examination, the issues to be canvassed, and/or provide copies of any documents to which they propose to take the witness.
74. Any grant of an application to cross-examine will be subject to limitations and restrictions imposed by the Chairperson or presiding Commissioner.
75. If an application to cross-examine is not granted, any procedural fairness or human rights concerns which arise from witnesses' evidence in wurrek tyerrang will be dealt with via other means, for example:
- (a) redaction of material prior to publication;
 - (b) leave to provide responsive submissions; or
 - (c) the provision of suggested questions by other parties to Counsel Assisting for use in evidence in chief, with affected parties to raise the matter with Counsel and/or Solicitors Assisting as soon as is reasonably practicable for assessment of appropriate steps.

NOTICES TO PRODUCE AND ATTEND AND REASONABLE EXCUSE CLAIMS

76. As a general rule, the participation of First Peoples' witnesses in wurrek tyerrang will be voluntary, consistent with the prioritisation of First Peoples' consent and Yoorrook's commitment to accommodate, to the extent possible, First Peoples' choices in how they wish to participate.
77. Yoorrook may issue written notices under the Act requiring any person to:
- (a) produce documents (**Notice to Produce**); and/or
 - (b) attend to give evidence (**Notice to Attend**).
78. It is an offence to refuse or fail to comply with a Notice to Produce or Notice to Attend without reasonable excuse.
79. A person served with a Notice to Produce or Notice to Attend may make a claim to Yoorrook that the person has or will have a reasonable excuse for failing to comply with the notice (**Reasonable Excuse Claim**).

80. A person may make a Reasonable Excuse Claim by:

- (a) notifying the Solicitors Assisting in writing of the claim by email at legal@yoorrook.org.au, accompanied by a short-written submission (no more than five A4 pages, 12-point font) setting out the basis upon which each claim is made, having regard to section 18(2) of the Act; and
- (b) making that claim:
 - (i) in relation to a Notice to Produce, on or before the production date specified in the notice; or
 - (ii) in relation to a Notice to Attend, five business days prior to the attendance date.

81. If Yoorrook is satisfied the Reasonable Excuse Claim is made out, it may vary or revoke the notice and advise the applicant in writing.

82. If Yoorrook is not satisfied the Reasonable Excuse Claim is made out, it may advise the applicant in writing.

MEDIA GUIDELINES

83. Media Guidelines will be published on Yoorrook's website. Members of the media should refer to those Guidelines for further information.

CONTACTING YOORROOK

84. All contact with Yoorrook regarding this Practice Direction should be made by email to legal@yoorrook.org.au.