

Yoorrook Justice Commission Ceremonial Wurrek Tyerrang Opening Remarks

Senior Counsel Assisting Fiona McLeod AO SC

Acknowledgement

Chair Bourke and Commissioners,

I acknowledge Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia.

We pay our respects to the Wurundjeri, the traditional owners of the land on which this Commission is meeting today. We acknowledge all peoples of the Kulin Nation.

This area Fitzroy, known as *Ngar-go* or 'high place', has for generations been a meeting place for our First Peoples, an important hub for sharing stories. In meeting here today we are mindful of this rich history and the voices of those who were here before.

Thank you to Uncle Colin for his welcome and all who shared in the ceremony this morning.

We acknowledge the Elders, families and ancestors of our First Peoples, the custodians of the lands and waters we occupy across Victoria, all Elders and all First Nations people following this public hearing. We stand on these lands having dispossessed and displaced our First Peoples.

Purpose

Today is the United Nations Right to Truth Day. It is a day that reminds us of the right to truth and dignity of those whose human rights have been violated.

The right to truth and dignity requires that the voices of those affected by events are spoken and are heard.

Truth has enormous potential as an empowering and healing force. In creating this Commission, the Government, the First Peoples' Assembly of Victoria, and all who worked for and dreamed that such a day might come to be, have recognised the transformative potential of the truth, when fully embraced.

The truth known to many of us is that the settlement and development of this State of Victoria, and before it the Port Philip District and Colony of Victoria, impacted profoundly on all our First Nations' peoples.

In 1770 when our First Nations first observed the *Endeavour* off the east coast of Australia, they were flourishing in communities, rich in language and culture, living sustainably in harmony with the seasons and the bounty of the earth, rivers and seas, with deep connections to the lands, waters and skies of the Earth.

After settlement and throughout the 1800s, particularly with the promotion of free settlers taking possession of their lands, they were treated brutally.

The people of our First Nations were dislocated and moved away from their homes, they were slaughtered and denied the protections of the law, they were stripped of rights, confined to reserves and missions, and their children taken away. The legal fiction of *terra nullius* was perpetuated by those seizing lands as their own.

Our First Peoples were controlled, forbidden to speak their languages, to practice in accordance with their customs, to initiate and educate their young and to honour their ancestors.

Early attempts to negotiate treaties were rebuffed by the colonial powers and not revisited until recent times. Protectors were appointed to care for our First Nations' people, but this care took the form of lawful violence and intimidation and policies of assimilation and extinguishment of their unique cultures and identities. They were classified and controlled based upon the colour of their skin, deprived of freedom of movement, stripped of possessions, locked up, "re-educated", silenced and punished. These injustices left deep scars that have been compounded by subsequent practices and policies of the State and other institutions. These are scars that have been carried by the descendants of First Nations ancestors for generations. These are the systemic injustices described by your Terms of Reference.

The institutions of the district, the colony, and later the State were responsible. Many organisations and individuals participated in, condoned and perpetuated acts of violence, injustice, and discrimination. Many others benefitted from those acts.

It is a testament to the ongoing strength of our First Nations people that our Elders continue to make us welcome on their traditional lands, in spite of our history. It is evidence of their strength and determination that despite the efforts of our predecessors, Our First Nations survived and the strong bonds between families and clans and their culture could not be broken.

Over the course of this Commission, you will hear stories of loss, powerlessness, anger, grief, and guilt. You will also hear stories of resistance, activism, struggle, and success. You will hear from people who have lived through these experiences and those who saw and heard the stories of injustice that shaped their parents, their grandparents and their great grandparents' lives.

You will also hear from those whose ancestors participated in and condoned injustice, those who carry a burden of guilt and who wish to walk with open hearts beside our First Peoples in partnership. Those who are committed to addressing the needs of First Nations' communities and to negotiating a new relationship of dignity, respect, and trust.

Significance of Commission

This Yoorrook Commission provides an unprecedented opportunity to shine a light on our history; to formally recognise and record the truth, to acknowledge – what was done by those with power to those who were deprived of power; to build a permanent

and public record; to reflect upon what has been lost, of the thousands of First Peoples' lives and the richness of culture destroyed by colonisation; to reflect upon who we are who remain.

This is also a Commission of Truth. You will have an important opportunity to support the realisation of the rights of our First Peoples; to support self-determination, treaty, and participation in and contribution to public life; to support the restoration of culture and language; and to promote a more fair, just and inclusive society.

This Commission builds upon the work of many champions across the generations who survived, persevered, who sought just outcomes and empowered and inspired others.

Information gathering

Commissioners you will gather information from many sources and hear evidence from many witnesses. You have already begun the process of speaking to community.

Your interim report is due in a little over three months' time, at the end June.

Beyond this, there are many important topics that deserve deep and close attention.

The early hearings will necessarily be general in nature, we begin with an initial group of elders and a number of key witnesses to give context to Yoorrook's work. These early hearings will explore a number of themes that we will return to later for closer examination after the delivery of the interim report – themes including:

- Family and community experiences of colonisation, including forced relocations from ancestral lands, segregation, loss of liberty, intergenerational trauma;
- The stolen generation and ongoing child removals;
- Systemic racism and ongoing injustice - including in interactions with Government, Police, Corrections;
- First Peoples culture and language - continuity, loss, and revival;
- Elders' perspectives on priorities for the future.

In approaching the task of evidence gathering, you will centre First Peoples' ways of knowing, being and doing, and take account of the directions within the Letters Patent including to:

- receive testimony from First Peoples who are victims, witnesses or survivors on their experiences and/or personal stories of historic injustice;
- recognise First Peoples' cultural and legal practices of storytelling and witnessing as legitimate and valid sources of evidence;
- accommodate to the extent possible First Peoples' choices in how they wish to participate, including their rights to free, prior and informed consent at all stages of participation;
- uphold the sovereignty of First Peoples over their knowledge and stories by consulting with them on how the information they provide should be treated and ensuring adequate information and data protection.
- acknowledge and respect differences between First Peoples, for example, through respecting different languages and practices;

- be responsive to the needs of participants in consultations, interviews, and other activities; and
- provide culturally appropriate support to participants and affected communities as required.

You will have the benefit of detailed submissions and evidence to support you in that work and to give many people and organisations the opportunity to contribute to this important work

Your engagement with First Nations' people will occur on country and at the Commission's home on Wurundjeri lands in Collingwood, or *Yalla Birr-ang*. It will also occur at locations which are significant to First Peoples' communities, and in the Aboriginal history of Victoria, including the site of former missions, in detention facilities, homes and other residential facilities or places of shelter, in public and in private sessions here in Melbourne and across the State.

You will hear evidence from representatives of the State and other organisations including peak bodies, service providers, missions and charities, landholders, local communities, and advocates. Our expectation is that each will assist the work of the Commission to the fullest extent possible.

You have the powers of a Royal Commission to assist in compelling witnesses and in the gathering of information if required and, and if necessary to protect witnesses

Tomorrow you will commence a five-week series of community consultations across Victoria, which will involve visiting Elders within key community locations across the State, to the extent permitted by Covid-19 public health requirements. To date, sessions have been arranged for Melbourne, Healesville, Bendigo, Horsham, Halls Gap, Warrnambool, Framlingham, and Geelong with details available on Yoorrook's website.

On 26 April we will commence our first round of public hearings here in Melbourne. We will hear from Elders and representatives of the First Peoples' Assembly of Victoria and Government. A second block of hearings will commence on 16 May.

Supports

All witnesses giving evidence deserve a culturally safe and respectful place to tell their stories. We have developed protocols to ensure that those giving evidence are heard and supported in a culturally appropriate way.

We expect that the work of the Commission will involve allegations of violence, abuse, sexual assault, and neglect. Those giving evidence and those following the work of the Commission may find these accounts to be distressing and in some cases, it is traumatic to report and also to hear these accounts. The Commission would encourage people to seek support as appropriate.

We recognise that, when engaging with the Commission, people may be reliving traumatic experiences, and that these experiences can have ongoing impacts both

directly, and for their broader family and community. To address this, the Commission is adopting a trauma-informed approach when engaging with the community, having regard to the key principles of safety, transparency, empowerment, capacity to collaborate, and cultural safety.

As part of this trauma-informed approach, counsellors and psychologists experienced with First Peoples will offer culturally informed social and emotional wellbeing support services to First Peoples engaging with Yoorrook.

Free legal information and advice will also be available to First Peoples' witnesses engaging with Yoorrook for those who seek it through the *Lotjpa* Independent Legal Service, a legal support model developed specifically for Yoorrook, in partnership with First Peoples experienced lawyers from Victorian Legal Aid and the Victorian Aboriginal Legal Service.

Yoorrook's community engagement team, itself staffed by Victorian First Peoples with extensive community networks and standing, will be vital in informing and supporting persons engaging with Yoorrook's processes, and in making referrals to the relevant support services.

In deciding how to conduct hearings, the Commission will give the highest priority to the health and well-being of those giving and hearing evidence, observing pandemic public health orders and mindful of the vulnerability of witnesses.

This may result in the need to close sessions to the general public, issue non-publication orders, rearrange plans at short notice, to restrict the work of the Commission on country and to be mindful of attending certain homes and facilities.

Public record

The Terms of Reference speak of the importance of the public record. We aim to contribute stories of many of our First Peoples and to begin to weave together the strands of a rich multimedia record.

In telling and recording stories there will be scope for oral accounts, for reflection upon statements given before for other purposes and other Inquiries, for photographs, audio recordings, diaries, message sticks and other personal material.

We expect that many non-Aboriginal people will also have stories to share to contribute family knowledge and corroborate the account.

There will be space for song, poetry, dance, works of art, cultural objects, and ceremony. There will be visits to places of historical significance informed by First Peoples' oral histories, supported by historians, anthropologists and archaeologists prioritising First Peoples experts wherever possible.

In all this work, and in approaching the possible publication of records of its proceeding, live streaming, use and archiving of material, the Commission will be guided by principles of data sovereignty and free, prior informed consent from participants.

Guidelines/Practice Directions

The Commission has wide powers available under the *Inquiries Act* and the Terms of Reference to allow it to complete its work, including to gather information and hear evidence. The Commission has been assisted in the design of its processes and work plan by the First Peoples' Assembly *Tyerri Yoorrook* report setting out Community expectations, and contextualising Victoria's treaty process which will run in parallel.

The Commission has recently published general guidelines about the Commission's procedures, these are available on the website

The guidelines use First Nations' language and First Peoples' knowledge and contemplate the Commission will participate in truth telling forums, yarning circles, workshops, round tables, community visits and cultural activities.

Guidance will be given in Practice Directions, information sheets and other resources about how to communicate with the Commission.

Guidance will be given about confidentiality, social and emotional wellbeing supports, practical assistance and how to access to free independent legal advice services.

The Commission has published a Practice Direction describing the conduct of in-person hearings, including (at least in this initial stage until the delivery of the interim report on 30 June 2022), restrictions upon those people permitted to attend in-person hearings in order to both ensure cultural safety for participating Elders, and manage the public health risk of Covid 19.

It describes the processes for identifying witnesses, making truth declarations, preparing witness statements, giving evidence, producing, and storing documents, leave to appear and legal representation of witnesses and restrictions on cross examination.

The Commission may issue Notices to Produce Documents and Notice to Attend to give Evidence to compel compliance, although as a general rule the participation of First Peoples' witnesses will be voluntary.

An information sheet has been prepared and published summarising Yoorrook's data sovereignty and governance policies in the case of information shared by, or concerning, First Peoples which recognise that First Peoples have the right to: own, control and use data deriving from them and about them in accordance with certain core principles; and (wherever practicable) provide free and informed prior consent to any proposed use or publication.

Protocols have been developed to assist with the production of data and documents by the State and a further Practice Direction is being finalised concerning the production and identification of documents and claims for non-production including claims of legal professional privilege.

The guidelines, directions and Information sheet are available on the Royal Commission website.

The Commission has and will continue to adopt First Nations' languages to describe its work and its practices. We will embrace the opportunity to learn and use languages and appreciate the generosity of Elders who have offered to guide us through unfamiliar words and phrases.

Our hearings will be known as *wurrung tyerrang*, the Wergaia phrase for speaking together. Our witness statements will be *balert keetyarra* the Wathaurong phrase for strong talk. Our submissions will be *nuther-mooyoop* the Boonwurrung word for truth.

I encourage anybody who intends to engage with the Commission or any legal or other representatives to view the guidelines.

Submissions

One of the ways the Commission will receive information from the public is through *nuther-mooyoop* or submissions.

Initially, the Commission will open submissions to Elders, encouraging them to engage in truth telling. Yoorrook recognises truth telling as a process of openly sharing truths after periods of conflict to allow for resetting of relationships, based on justice and human rights. It is the act of telling Victoria's true history, particularly the experiences of First Peoples which have been disregarded for many years.

In the second half of this year, Yoorrook will invite submissions from other First Peoples and will invite the broader Victorian community to make submissions on particular topics.

The Commission will publish discussion papers on such topics from time to time and invite submissions to inform its research and shape its findings and recommendations. Information will be provided in due course on the website about how to make submissions.

Lines of inquiry will include –

- Political organisation, resistance, and self-determination
- Law and lore
- Culture and cultural heritage
- People, society, and wellbeing
- Land, water, and resources
- Ecology and caring for country
- Economy, productivity, and sustainability

And we will touch on First Peoples interactions with police, systems of youth and criminal justice, corrections, and the status of implementation of the Royal Commission into Aboriginal Deaths in Custody.

Conflicts

Commissioners, you have each been appointed because of your standing in the community, your professional and academic expertise, and your deep connections to First Peoples in Victoria.

From time to time, it will be necessary for you to consider complex family relationships and other personal and professional connections, and, where appropriate, to disclose those matters.

We have developed a protocol for the identification, declaration, and management of potential conflicts of interest that recognises the extent and value of your respective networks and that will allow the Commission to continue its important work.

Conclusion

The task ahead, to examine past and ongoing injustice experienced by Traditional Owners and our First Nations' peoples since colonisation, in all areas of life, is significant. The Terms of Reference of this Inquiry are broad and ambitious. You are working to establish a public record and a shared understanding of the impact of colonisation on our First Peoples. You will make important recommendations for healing, system reform and practical changes to laws, policy, and practice. This task is unprecedented in scope and ambition.

In establishing this Commission and endorsing the Terms of Reference the Government has signalled something powerful and unique in Australia, knowing that others in other places are watching.

Each of you will bring your knowledge and expertise to bear on the work of the Commission and the Terms of reference.

And each of you will be supported in this important work by those assisting you.

This Commission has the potential to have a transformational effect on the lives of Victorians now and in the future.

Commissioners, every person involved in this Commission is committed to achieve that potential.

Wominjeka

Wa-nganjinu ngana warr ngat

We come with purpose

We hear all of you