

PRACTICE DIRECTION 1 – PUBLIC HEARINGS

Introduction

1. This Practice Direction sets out guidance about and procedures for conducting and participating in public hearings held by Yoorrook.
2. All Traditional Owners and First Peoples in Victoria will have the opportunity to tell their truth, including by participating in public hearings and other relevant processes (e.g. roundtables, yarning circles, and through submissions and issues paper responses) to be advertised and scheduled. The broader Victorian community will also be invited to participate.
3. This Practice Direction is to be read together with Yoorrook’s General Guidelines on Information Gathering and Evidence.
4. 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**).
5. This Practice Direction and any other practice directions published by Yoorrook may be varied, changed or replaced from time to time.
6. Yoorrook may also depart from this Practice Direction at any time if it considers it appropriate, including having regard to cultural considerations.

Conduct of Public Hearings

7. Yoorrook’s public hearings will generally (unless otherwise notified, and subject to change):
 - a. be held at Yoorrook’s premises at Level 9, 54 Wellington Street, Collingwood 3066;
 - b. sit from:
 - i. Morning: 10am to 1pm; and
 - ii. Afternoon: 2pm to 4pm (with additional short breaks); and
 - c. be livestreamed on Yoorrook’s website.
8. For safety reasons (including in relation to COVID-19):
 - a. visitors to the public hearings will be asked to sign in; and
 - b. capacity restrictions may apply.
9. Yoorrook reserves the right to close hearings and/or direct that certain persons be removed from public hearings to minimise disruption and ensure cultural safety (including by making an excluded person(s) order, in accordance with section 24 of the Act: see paragraphs 48 to 50 below).
10. Subject to any restricted or closed hearing orders (see paragraphs 36 to 41 below) or restricted publication orders (see paragraphs 42 to 47 below), public hearings will be video recorded, with transcripts produced and published.

11. Subject to the provisions of the Act, the conduct of public hearings will be at the discretion of the Chairperson (including under delegation to other Commissioners as necessary).

Embedded Cultural Protocol

12. Yoorrook will centre First Peoples' ways of knowing, being and doing by embedding cultural protocol into the conduct of public hearings, including:
 - a. Welcome to Country;
 - b. Traditional Owner acknowledgments;
 - c. ceremonial elements (for example, smoking ceremonies);
 - d. use of Traditional Owners' languages;
 - e. providing First Peoples-specific supports, including holistic social and emotional wellbeing support;
 - f. cultural activities such as art, dance or music; and
 - g. display of archival material.
13. Yoorrook will consult regularly with First Peoples' participants in determining appropriate cultural protocol and arrangements for the conduct of public hearings.
14. 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.
15. For more information, see: [Indigenous Data Sovereignty and Data Governance](#).

Witnesses

Identification of witnesses

16. Having regard to its Terms of Reference and priority focuses from time to time, Yoorrook will identify and directly contact witnesses to participate at public hearings, 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.
17. Yoorrook considers a number of factors in identifying people and organisations who are invited to participate in public hearings including:
 - a. the expertise and experience of professional witnesses and organisations;
 - b. whether the person's evidence will highlight issues that Yoorrook is inquiring into;

- c. whether the person's evidence will highlight the strength and diversity of First People's communities and cultures;
 - d. the need for trauma-informed inquiry practices that minimise harm and re-traumatisation; and
 - e. the need to represent the diversity of First Peoples communities in Victoria.
18. Yoorrook will determine which witnesses are to appear, the order in which witnesses appear, and the methods through which they will share their evidence (for example, either individually or in a group setting (including a panel, roundtable or yarning circle)).
19. Public hearings are not the only or the primary way for individuals to tell their truth to Yoorrook. There is no 'hierarchy' of evidence – all evidence whether provided at a hearing, or in a submission or other way (for example, a yarning circle) will be treated with the same level of importance. Free and confidential legal support and social and emotional wellbeing support is available for people engaging with Yoorrook, regardless of the way they are engaging.
20. Persons who have not been asked by Yoorrook to participate at public hearings or share their evidence may themselves contact Yoorrook to express their interest in participating in these processes. This should be done by email to legal@yoorrook.org.au, copied to ben.kiely@au.kwm.com and emily.heffernan@au.kwm.com.
21. All First Peoples are able to make a submission to Yoorrook about systemic injustice experienced by First Peoples in Victoria. Information on making a submission is available here: <https://yoorrookjusticecommission.org.au/have-your-say/make-a-submission/>.

Truth declarations

22. The Letters Patent direct Yoorrook to recognise First Peoples' cultural and legal practices of storytelling and witnessing as legitimate and valid sources of evidence. Therefore, all First Peoples' witnesses called at public hearings will be invited to make a culturally appropriate declaration to tell the truth (**truth declaration**), which may include an oath or affirmation.
23. Witnesses who are not First Peoples will be invited to make an oath or affirmation.
24. 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 evidence from that witness.

Witness statements and other written materials

25. Witnesses invited to participate in a public hearing, will be encouraged to (including where necessary with the assistance of Yoorrook's Counsel and Solicitors Assisting team (and any authorised independent legal representative)):
- a. prepare a witness statement, high-level outline, submission or issues paper response; and/or
 - b. assemble any other material they can speak to and/or share with Yoorrook as part of their evidence (including correspondence, historical records, media articles, academic papers, Annual Reports, and submissions from previous Inquiries and Royal Commissions).
26. In other cases, a witness may be provided with:

- a. a list of topics to be addressed in the proposed witness statement, outline or other written material, and the witness statement is to follow and address each topic; and
- b. their witness statement, outline or other written material may be prepared with the assistance of their own organisation and/or legal representative (if they are represented).

Evidence

Documents for public hearings

27. Counsel Assisting will determine which documents are to be displayed and/or tendered as evidence 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.
28. Any legal representatives of persons appearing as witnesses in public hearings 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 51 to 52,
- may be given confidential access to documents that may be tendered as evidence before the commencement of the relevant session.
29. If a party seeks to have a document displayed or tendered at a public hearing (with the exception of exhibits to any witness statement), the process is that:
- a. they must notify Solicitors or Counsel Assisting that they wish to have the document placed before the public hearing 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.
30. 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 42 to 47 below); and
 - b. Yoorrook's Indigenous Data Sovereignty policies as published from time to time.

Access to and publication of evidence from public hearings

31. Subject to any restricted or closed hearing orders (see 36 to 39 below) or restricted publication orders (see 42 to 47 below), Yoorrook will apply the following procedures to evidence given at public hearings:
- a. transcripts of evidence will be uploaded onto Yoorrook's website as soon as practicable;
 - b. witness statements, witness outlines, submissions or issues paper responses referable to a witness' evidence will be made available on Yoorrook's website as soon as practicable after the witness has given evidence;

- c. video recordings of public hearings will be available on Yoorrook’s website as soon as practicable after its conclusion; and
- d. documents received into evidence, including exhibits, will be available on Yoorrook’s website as soon as practicable after the document has been tendered.

Mechanisms to Protect Witnesses and Evidence

- 32. Consistently with its Letters Patent, Yoorrook is committed to providing a safe, supportive and culturally appropriate forum for First Peoples’ individuals and organisations to engage in truth-telling with dignity and as little formality as possible. This includes accommodating, to the extent possible, First Peoples’ choices in how they wish to participate.
- 33. Yoorrook is also obliged to adopt practices and approaches in the conduct of its public hearings to minimise harm and re-traumatisation for First Peoples.
- 34. To that end, there are several mechanisms that Yoorrook will use if and when necessary or appropriate to protect witnesses and evidence.
- 35. 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’ hearing orders

- 36. In some circumstances, it may be necessary or appropriate for part or all of a witness’ evidence to be provided in a restricted or ‘closed’ hearing, in accordance with section 24 of the Act.
- 37. A person scheduled to appear as a witness at a public hearing may seek a restricted or closed hearing order in respect of any evidence to be given.
- 38. In the case of First Peoples’ witnesses, Yoorrook will work with a witness and any authorised independent legal representative in advance of the hearing to identify any sensitive subject matter which might warrant the making of a restricted or closed hearing order.
- 39. 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 public hearing 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 evidence 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.
- 40. A restricted or closed hearing order may involve closing the hearing to the public. A restricted or closed hearing order may also involve:
 - a. temporarily pausing Yoorrook’s livestream 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 (including any witness statement, witness outline, submission or issues paper response) and any related documentary exhibits.
41. 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

42. In some circumstances, it may be necessary or appropriate to prohibit or restrict the publication of certain information or evidence produced in a public hearing 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.
43. In the case of First Peoples' witnesses, Yoorrook will work with the witness and any authorised independent legal representative in advance of the public hearing to identify any information which might be prohibited or restricted from publication.
44. In the case of all other witnesses, a person appearing as a witness at a public hearing may seek a restricted publication order in respect of any evidence to be given, or already given. A restricted publication order can be made with or without an accompanying restricted or closed hearing order.
45. 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 public hearing 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 evidence 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.
46. A person served with any Notice to Produce relevant to the evidence to be given at a public hearing who wishes to make an application seeking a restricted publication order should make the application at the time of production or as otherwise agreed with the Solicitors Assisting.
47. 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

48. 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 public hearing. Upon receipt of an

application, Yoorrook may make an excluded person(s) order, in accordance with section 24 of the Act.

49. 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 public hearing 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 evidence 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 evidence 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.
50. 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

51. Witnesses appearing before Yoorrook to give evidence at a public hearing may be legally represented at the public hearing only with the prior authorisation of Yoorrook.
52. Where a legal practitioner seeks this prior authorisation:
- the legal practitioner is to inform Yoorrook in writing at least three business days prior to the witnesses' scheduled appearance;
 - 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
 - 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 evidence at the public hearing. For the avoidance of doubt, leave will not be granted to cross-examine any individuals, agencies or organisations to which the individual witness' evidence relates.

Examination and Cross-Examination of Witnesses

Examination

53. In the case of all witnesses called at public hearings, absent any prior order by the Chairperson or other Commissioner to the contrary, evidence in chief will be led by Yoorrook's Counsel Assisting.
54. If a witness is cross-examined (noting that cross-examination of witnesses is generally not permitted as set out below), Counsel Assisting may also re-examine the witness after cross-examination concludes.

55. 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

56. As a general rule, Yoorrook will not permit cross-examination of witnesses appearing at hearings. In the case of First Peoples' witnesses, Yoorrook's Letters Patent direct it 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 public hearings to minimise harm and re-traumatisation for First Peoples.

57. Cross-examination of witnesses will only be permitted in exceptional circumstances and at the discretion of the Chairperson (see further paragraphs 70 to 77 below). Where limited cross-examination is permitted:

- a. in the case of First Peoples witnesses, 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 Solicitors and/or 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 public hearing 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 Public Hearings

When leave to appear is required

58. Applications for leave to appear are only required where a person or organisation seeks to appear at public hearings.

59. In the case of persons:

- a. invited or authorised to attend the public hearings; 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 51 to 52.

60. 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

61. Any applications for leave to appear, where invited, should be made on the form ‘Application for Leave to Appear at the Yoorrook Justice Commission’ at Appendix 1. This form should be accompanied by a short-written submission (no longer than two A4 pages, 12-point font) setting out:
- the basis on which the application is made, having regard to the factors set out in paragraph 64; and
 - any proposed legal representation arrangements.
62. The form and submission should be sent to legal@yoorrook.org.au, copied to ben.kiely@au.kwm.com and emily.heffernan@au.kwm.com, by no later than three business days prior to the relevant public hearing date (Yoorrook may extend or abridge this time as is deemed necessary and practicable).
63. An application will either be determined on the papers in advance of each public hearing 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.
64. Yoorrook will consider the following factors when determining an application for leave to appear:
- the purpose for the application, for example, to cross-examine a witness at a particular public hearing, and the reasons why it is necessary or appropriate (see further paragraphs 70 to 77 below);
 - whether the person has a direct or special interest in the subject matter of the inquiry;
 - whether the person has been served with a Notice to Produce by Yoorrook concerning the particular inquiry (or witness) to which the public hearing relates;
 - the likelihood that Yoorrook may make an adverse finding against the person;
 - the ability of the person to assist Yoorrook in the inquiry; and
 - such other matters as Yoorrook considers relevant.
65. Leave to appear before Yoorrook or otherwise attend the public hearings 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

66. Where a person is granted leave to appear (or is an authorised legal representative of a witness) they are entitled to participate in the public hearing 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):
- to have evidence tendered or heard;
 - in exceptional circumstances only, leave to cross-examine a witness in accordance with paragraphs 70 to 77 below; or

- c. to make submissions about the findings available to Yoorrook following the relevant hearing.
67. 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, copied to ben.kiely@au.kwm.com and emily.heffernan@au.kwm.com, as soon as possible (and at least seven days prior to the relevant public hearing 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.
 68. 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 51 to 52.
 69. Subject to paragraph 58, persons may seek leave to appear at any time if something that has occurred during a public hearing leads them to believe that they may have a direct or special interest in the subject of inquiry.

Applications to cross-examine

70. In exceptional circumstances and at the discretion of the Chairperson, cross-examination of witnesses may be permitted, for example, where:
 - a. Yoorrook considers the cross-examination 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).
71. A person or organisation seeking leave to cross-examine a witness must first be granted leave to appear at the specific public hearing in question (see paragraphs 61 to 66 above).
72. 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.
73. The application and accompanying submission should be lodged with Yoorrook by email to legal@yoorrook.org.au seven days prior to the relevant public hearing date (Yoorrook may extend or abridge this time as is deemed necessary or practicable).
74. The application will either be determined on the papers in advance of each public hearing 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.
75. 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.

76. Any grant of an application to cross-examine will be subject to limitations and restrictions imposed by the Chairperson or presiding Commissioner.
77. If an application to cross-examine is not granted, any procedural fairness, reputational or human rights concerns which arise from witness' evidence in public hearings 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

78. As a general rule, the participation of witnesses in public hearings 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.
79. Yoorrook may, where appropriate or requested by a witness, 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**).

For example, Yoorrook may issue Notices to Attend to government representatives.

80. It is an offence to refuse or fail to comply with a Notice to Produce or Notice to Attend without a reasonable excuse.
81. 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**).
82. A person may make a Reasonable Excuse Claim by:
- a. notifying the Solicitors Assisting in writing of the claim by email to 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 final production date specified in the notice; or
 - ii. in relation to a Notice to Attend, no later than three business days prior to the attendance date.

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

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

Media Guidelines

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

86. Members of the media wishing to attend public hearings should contact Evan Schuurman, Senior Media Advisor, at evan.schuurman@yoorrook.org.au or 0408 847 385.

Contacting Yoorrook

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

APPENDIX 1

YOORROOK JUSTICE COMMISSION

APPLICATION FOR LEAVE TO APPEAR AT PUBLIC HEARINGS

Date of application	
Name of person or organisation seeking leave to appear	
Date(s) for which leave to appear is sought	
Name of legal representative and firm (if any)	
Name(s) of any Counsel briefed	
Contact person(s)	

Please attach a short submission of no more than two pages addressing:

1. the matters referred to in section 15(2) of the Inquiries Act 2014 (Vic); and
2. whether and how granting leave to appear would assist Yoorrook's inquiry over and above the assistance which may be provided by way of written submissions made by the applicant.

Please apply by lodging this form with the submission by email to legal@yoorrook.org.au, copied to ben.kiely@au.kwm.com and emily.heffernan@au.kwm.com.