

# PROTOCOL BETWEEN THE YOORROOK JUSTICE COMMISSION AND THE CROWN IN RIGHT OF THE STATE OF VICTORIA

## *In relation to data and documents to be provided by the Crown in right of the State of Victoria*

### A. Background

1. The Yoorrook Justice Commission (**Commission**) was established on 12 May 2021.<sup>1</sup>
2. In order to fulfil its terms of reference, the Commission requires access to documents and other things in the possession and control of the State of Victoria (**State**). The State acknowledges that the Commission requires timely and complete access to perform its truth telling role, achieve its objectives, and for other purposes that is, to the broadest extent possible at law, unrestricted. The State also acknowledges that truth telling requires it to confront and reveal the truth of current and past practices and policies, even where this is uncomfortable, embarrassing, difficult or presents reputational risk, and that that the Commission's role as a truth telling and healing process is best served by achieving an open dialogue and access to the information that it requires.
3. The Commission and the State's intention is to establish a conciliatory and flexible approach to the timely and complete production of all documents and other things throughout the life of the Commission.
4. To that end, the State's overriding objective is to provide the Commission with full and timely access to all relevant information, including information which is or would ordinarily be subject to a reasonable excuse claim under the Inquiries Act. Any restrictions on the provision or use of material should be as limited as possible.
5. There are some limited, rare circumstances where the State may consider that there is an existing legal right that prohibits it from providing a document as a matter of law (e.g. a court order applies to the document or it is prohibited from disclosure by another Act which applies to Royal Commissions) or otherwise it would be able to claim public interest immunity in respect of the document and the overriding public interest in the document requires the State to withhold it (e.g. release of the document might damage international relations, or create a defence or security risk to the State). In these instances, the State will still provide the information required by this protocol (**Protocol**) and may still provide access to the document in accordance with this Protocol.
6. Where the State provides the Commission with access to information that is subject to a reasonable excuse claim or request that might ordinarily prevent its public disclosure, this Protocol sets up a practical process for resolution of such claims.

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<sup>1</sup> by letters patent issued under the *Inquiries Act 2014* (Vic) (**Inquiries Act**) on 12 May 2021 (**Letters Patent**)

Wherever that process can result in the Commission being able to at least access and view such material, the State will make every effort to facilitate this.

7. The Protocol also sets up the process by which the State may request, and Commission consider, orders for restricted or prohibited publication where documents or things compelled contain sensitive information, as envisaged by section 26 of the Inquiries Act (**Sensitivity Order**). The State will seek a Sensitivity Order or other remedy short of withholding a document wherever possible.

## **B. Purpose**

8. The purpose of this Protocol is:
  - 8.1 to facilitate timely and efficient access by the Commission to documents and other things it requires for its inquiry which are in the custody, possession and/or control of the State;
  - 8.2 to establish mechanisms to efficiently manage and process documents subject to a claim of reasonable excuse under section 18 of the Inquiries Act or restricted or prohibited publication in accordance with section 26 of the Inquiries Act; and
  - 8.3 to provide agreed processes for communication, consultation and cooperation between the Commission and the State, for the purposes of minimising and resolving any issues with the production of documents without occupying hearing and/or Court time, including by providing pathways for informally resolving issues that might arise in relation to document management.
9. This Protocol is to be read in conjunction with any Practice Directions issued by the Commission, but prevails to the extent of any inconsistency with such directions, unless expressly noted to the contrary in a Practice Direction.
10. Nothing in this Protocol limits the powers of the Commission or the rights of the State as set out in the Inquiries Act.

## **C. Definitions**

11. In this Protocol:
  - 11.1 *Notice* means a Notice to Produce served under section 17(1)(a) of the Inquiries Act;
  - 11.2 the *State* means the Crown in the Right of the State of Victoria including its Ministers, Departments and public bodies subject to Ministerial control or direction;
  - 11.3 *Parties* means the State and the Commission;
  - 11.4 *Inquiries Act* means the *Inquiries Act 2014 (Vic)*;

- 11.5 *Reasonable Excuse* has the same meaning as in the Inquiries Act, which in summary, permits non-compliance with a Notice where the information:
- (a) incriminates the person in relation to ongoing proceedings, or makes them liable to penalties in ongoing proceedings (s18(2)(a));
  - (b) is covered by the subject of parliamentary privilege (s 18(2)(b));
  - (c) is the subject of public interest immunity (s 18(2)(c));
  - (d) is prohibited from disclosure by a court order (s 18(2)(d));
  - (e) is prohibited from disclosure by another enactment that specifically applies to the giving of information or the production of documents or other things to a Royal Commission (s 18(2)(e)); or
  - (f) is subject to another enactment that specifically prohibits disclosure of information or the production of documents or other things to a Royal Commission (s 34(3)).
- 11.6 *Reasonable Excuse Document* means a document produced by the State which the State claims is subject to a Reasonable Excuse;
- 11.7 *Sensitivity Order* means an order under section 26 of the Inquiries Act, which in summary, allows a Commissioner to make an order prohibiting or restricting the release of information that may enable the identity of a person who has given, or is to give, information or evidence to the Commission for the purposes of an inquiry to be ascertained, or any information or evidence given to Yoorrook for the purposes of any inquiry, on the grounds that:
- (a) prejudice or hardship might be caused to any person, including harm to a person's safety or reputation;
  - (b) the nature or content is sensitive;
  - (c) disclosure could prejudice legal proceedings;
  - (d) the conduct of the proceeding would be more efficient and effective; or
  - (e) the Commissioner otherwise considers the prohibition or restriction appropriate.

#### **D. Process for responding to a Notice**

12. Consistent with the Inquiries Act, the Commission may inform itself in whichever way it sees fit, including by requesting information, or issuing a Notice in accordance with the Inquiries Act.

13. Before issuing a Notice, the Commission may, where possible and appropriate to do so, consult with the State on the content of a proposed Notice, including through provision of a draft Notice. The State and the Commission acknowledge that this may allow for:
  - 13.1 an opportunity to ensure that the proposed Notice will appropriately capture the information that the Commission is seeking to obtain;
  - 13.2 an opportunity to provide feedback to the Commission on which departments or agencies should receive the proposed Notice;
  - 13.3 an opportunity to give an estimate of the volume of documents that may be produced, the timeframe likely to be involved in their searching out and production, and/or the likelihood of irrelevant documents being captured by the scope of the proposed Notice; and
  - 13.4 increased efficiency and timeliness in responding to an issued Notice.
14. When a Notice is issued in accordance with the Inquiries Act, the State acknowledges the need for it to:
  - 14.1 identify and produce in accordance with this Protocol and the Inquiries Act all relevant documents within the scope of the Notice;
  - 14.2 otherwise constructively engage with the Commission to supply it with fulsome, accurate and timely information to enable it to carry out its work; and
  - 14.3 produce the material in an organised way (including in accordance with any Practice Direction) to facilitate the Commission's review.
15. To that end, after receiving a Notice, the State will:
  - 15.1 notify the Commission immediately at the earliest opportunity if there are any issues related to the drafting or scope of the Notice that require discussion or clarification;
  - 15.2 identify all responsive documents within the scope of the Notice;
  - 15.3 identify, review and produce documents within the timeframe specified in the Notice issued in accordance with the Inquiries Act, unless otherwise agreed between the State and the Commission; and
  - 15.4 notify the Commission immediately if it considers that it cannot reasonably produce the documents responsive to the Notice within the specified timeframe, providing reasons. Where this is so, the State will outline a proposal for the production of all responsive documents in tranches, commencing and concluding as soon as reasonably practicable.

16. Nothing in the arrangements in [13] – [15] above are intended to limit the Commission's rights under s 23 of the Inquiries Act.

#### **E. Process for making claims and requests over documents and information**

17. Except in exceptional circumstances (and where there is an existing legal right) or where it is prohibited from doing so by law, the State will provide access to the Commission to all relevant information the Commission seeks, including information which is subject to a Reasonable Excuse or a request for a restricted or prohibited publication order under section 26 of the Inquiries Act.
18. Consistent with the Inquiries Act, in providing documents to the Commission, the State may make the following claims:
  - 18.1 **No claim:** Unrestricted production, no limits on future use;
  - 18.2 **Sensitivity Order request (other than in the case of culturally sensitive information, dealt with separately below):** The State requests that the Commission consider granting a Sensitivity Order under section 26 of the Inquiries Act for restricted or prohibited publication. The State will specify the specific nature of the restricted or prohibited publication sought (e.g. redact specified personal information only, de-identify data) together with reasons for the request. The State will still produce the full document to the Commission, with the content within the document that is subject to the request clearly identified through highlighting (unless the same document is also subject to a Reasonable Excuse claim);
  - 18.3 **Reasonable Excuse (restricted access):** The State claims that a Reasonable Excuse applies to a document under section 18 of the Inquiries Act, but provides the document on the basis of restricted or prohibited publication of the document (at least until such time that the claim is resolved). The State will provide reasons for the claim. Where a document is provided under this clause, the Commission will treat the document in accordance with Schedule A;
  - 18.4 **Reasonable Excuse (withheld):** In exceptional circumstances and only where there is a strong overriding reason, on public interest grounds and where the State is entitled under the Inquiries Act to claim Public Interest Immunity, or where the State claims to be prohibited from providing a document to the Commission at law, the State will withhold a document. In doing so, the State must still notify the Commission of the document's existence, and provide the information specified at clause 20 of this Protocol. If the Commission objects to the State's claim in respect of such a document, the process in clause 35 below shall be followed.
19. When the State produces documents to the Commission in response to a Notice, it will provide a cover letter confirming the number of documents produced and that the production complies with any relevant Practice Direction and this Protocol,

whether the production constitutes full or partial response to the Notice and, in relation to each document, the following information:

- 19.1 document ID;
  - 19.2 document title;
  - 19.3 date of document;
  - 19.4 document author and recipient or audience; and
  - 19.5 any claim or request that applies to all or part of the document, the basis of the claim (if a public interest immunity claim, in the form specified in Schedule B) or request and nature of the sensitivity or risk sufficient to understand the basis for the claim or request.
20. When the State produces Reasonable Excuse (withheld) documents in accordance with clause 18.4, it will notify the Commission of the number of documents withheld and the following information about each such document:
- 20.1 document ID;
  - 20.2 document title or brief description of document's contents;
  - 20.3 date of document;
  - 20.4 document author and recipient or audience; and
  - 20.5 any claim or request that applies to the document and the basis for that claim (if a public interest immunity claim) in the form specified in Schedule B) or request. If the claim is over part of the document, that part will be redacted and the balance provided in accordance with clauses 18.1 - 18.3.

#### **F. Process for managing claims and requests**

21. The Commission will consider documents produced subject to claims or requests and whether such documents assist it to fulfil its Terms of Reference, along with accompanying information regarding any claims or requests relevant to the document.
22. Where the Commission determines that it does not need to publish, cite or otherwise refer to the document or other thing that is the subject of a claim or request publicly, the claim or request need not be resolved.
23. If the Commission considers that it wishes to admit to evidence or publish information that is subject to a claim or request, the processes in this section apply.
24. Until a Reasonable Excuse (restricted) or Reasonable Excuse (withheld) claim or request is resolved, the Commission will not admit the material to evidence, or publish, cite or refer to it in a way that would publicly disclose the subject matter of the public interest immunity claim.

25. The Commission will limit access to material subject to claims or requests:
- 25.1 in the case of Reasonable Excuse (restricted) documents, in accordance with Schedule A;
  - 25.2 in the case of Reasonable Excuse (withheld) documents, in accordance with clause 31.3.

*No claim*

26. Where the State makes no claim, the Commission may use the document, admit it to evidence or publish it as it pleases.

*Sensitivity Order Request*

27. If the Commission wishes to admit to evidence or publish a document or information that is the subject of a Sensitivity Order request by the State, the Commission will endeavour to:
- 27.1 seek further information from the State and allow (wherever possible) two to three business days to provide a response;
  - 27.2 engage with the State to discuss the nature of any Sensitivity Order that might be issued; or
  - 27.3 in circumstances where the Commission intends to deny the request, provide (wherever possible) the State with seven days' notice to make submissions to the Commission. The Commission will then consider the State's submissions and determine the request, notifying the State in writing of the outcome.
28. The Commission may specify a shorter period than those specified above if the information is urgently required.

*Reasonable Excuse Document (restricted)*

29. If the Commission determines that a Reasonable Excuse Document (restricted) is not properly subject to a claim of Reasonable Excuse, clauses 38 to 39 apply.

*Reasonable Excuse Document (withheld)*

30. Once it receives the information relevant to the Reasonable Excuse Document (withheld) as specified in clause 20, the Commission will identify, in writing, whether or not it wishes to inspect a document over which the State claims Reasonable Excuse.
31. Unless it has a strong overriding reason not to (based on a prohibition at law or based on public interest immunity considerations), the State will make any Reasonable Excuse Document (withheld) the Commission seeks to inspect available

for inspection, to allow the Commission to consider the State's claim. It will do so as promptly as possible at either:

- 31.1 the Department of Premier and Cabinet's office (in respect of Cabinet documents); or
  - 31.2 the premises of the Commission; or
  - 31.3 pursuant to any other arrangements agreed including in light of public health restrictions on physical meetings and cabinet protocols restricting any virtual inspection by reference to particular security, software or other arrangements.
32. When a Reasonable Excuse Document (withheld) is made available to the Commission for the purposes of inspection, the Commission will:
- 32.1 not copy or store the document on any document management system;
  - 32.2 not reproduce, note or record the content of the Reasonable Excuse Document (withheld) in a way that, if disclosed, would disclose the subject matter of the public interest immunity claim;
  - 32.3 limit access to the Commissioners, CEO of the Commission, Counsel Assisting and Solicitors Assisting the Commission or other persons agreed between the Commission and the State; and
  - 32.4 return the inspected document to the State or delete any electronic copies.
33. Where a Reasonable Excuse Document (withheld) is made available for inspection, the Commission must determine whether it considers that:
- 33.1 the document should be produced, on the basis that it is not properly subject to a claim of Reasonable Excuse;
  - 33.2 where the claim is public interest immunity, while the document is properly subject to a claim of Reasonable Excuse, the public interest in its production outweighs the public interest in preserving its secrecy or confidentiality; or
  - 33.3 the document need not be produced.
34. Without limiting the powers of the Commission under the Inquiries Act, when considering the public interest in preserving the secrecy or confidentiality of a Reasonable Excuse Document (withheld), the Commission acknowledges that the State is in a unique position to provide the Reasonable Excuse information, and the Commission would typically confer with the State at first instance if any queries arise or if further information is required.
35. If, after inspection, the Commission determines that the Reasonable Excuse Document (withheld) should be produced on the basis provided for at clause 33.1 and/or 33.2 and the State does not object to that production, within two business

days of receiving notification of that determination, the Reasonable Excuse Document (withheld) or information will be produced to the Commission and:

- 35.1 treated in accordance with the standard protocols in Schedule A; or
  - 35.2 if the State or the Commission consider that it is not appropriate to apply the standard protocols to that document, in accordance with such conditions agreed between the State and the Commission.
36. If, after inspection, the Commission determines that it does not require the Reasonable Excuse Document (withheld) to be produced, it will notify the State's legal representatives and the inspected document and any copies will be returned to the State (if in the possession of the Commission).
37. Where appropriate, specific additional arrangements will be made for categories of public interest immunity documents which raise particular issues. These will include:
- 37.1 confidential sources and investigations: additional security protocols may need to be put in place regarding documents containing such information;
  - 37.2 information the disclosure of which may affect intergovernmental or international relations: additional consultation may need to occur with other governments to determine whether they wish to make a claim of public interest immunity in relation to documents containing such information;
  - 37.3 Cabinet documents of previous governments: constitutional conventions exist regarding access to certain records of previous governments. As an incident of those conventions, the views of the Leader of the Opposition and/or former State Premiers will need to be sought before any protocol (including as to whether and how a claim for public interest immunity should be made) can be applied to Cabinet documents of a previous government constituted by members of parliament from a different political party.

*Resolution of disputed claim of Reasonable Excuse and other disputes*

38. In circumstances where the claim or dispute cannot be mutually resolved to the Commission's satisfaction or any disclosure of a Reasonable Excuse (withheld) Document might be prohibited at law, the State or the Commission may apply to bring proceedings in the Supreme Court of Victoria to resolve a claim over the Reasonable Excuse Document.
39. If the State advises the Commission (or vice versa) that it intends to bring proceedings in the Supreme Court of Victoria in relation to a Reasonable Excuse claim over a particular document:
- 39.1 the Commission will not otherwise deal with that Reasonable Excuse Document, unless the parties come to an agreement as to the proposed

use or disclosure of the information, or until the relevant Court proceedings have concluded (or being advised as described below); and

- 39.2 the State will advise the Commission immediately on determining that it no longer intends to bring or continue a proceeding in a relevant Court.

*Parliamentary privilege*

40. If the State considers that a document it has identified as relevant to a Notice from the Commission is subject to a claim of parliamentary privilege on the basis of section 18(2)(b) of the Inquiries Act, the State is not able to produce the source document or material to the Commission on any basis, unless the document or information is publicly available, as this privilege belongs to Parliament and not the State. In either case, the State will identify any such material in covering correspondence to the Commission.

*Access to records of previous governments*

41. Constitutional conventions impact the State's ability to produce certain records of previous governments. As an incident of those conventions, the views of the Leader of the Opposition and/or former State Premiers will need to be sought before any such documents of a previous government constituted by members of parliament from a different political party are produced, even for inspection.
42. Where the State identifies that a Notice requires production of documents that are technically in its possession, custody or control but which the current government cannot, by convention, access, it will raise this with the Commission.
43. If the Commission identifies that it still requires access to the document, the State will promptly make the enquiries required by convention to enable this to occur. The Commission acknowledges that the State may not be able to secure approvals for access to this material quickly or at all.

*Irrelevant Personal Information*

44. The Commission has determined that the following information ("Irrelevant Personal Information") is not generally relevant to its Terms of Reference:

44.1 personal identifying information (e.g. names, telephone numbers, email addresses, signatures) belonging to non-executive personnel of a State or private agency who may be alive; and

44.2 the contact details of executive personnel (e.g. telephone numbers, email addresses, home addresses), who may be alive,

unless the Commission has indicated in a notice or in correspondence that particular personal identifying information or contact details are relevant to a request or notice.

45. Accordingly, unless otherwise directed by the Commission, when producing documents in response to a Notice (including statements), the State may produce documents in two forms:
- 45.1 an unredacted copy of the document which contains Irrelevant Personal Information; and
  - 45.2 a redacted copy of the document, in which the redacted information may be replaced with text reflecting the reason for redaction (e.g. 'non-executive', 'contact details').
46. When documents are produced in accordance with clause 45:
- 46.1 The State will not be required to make a formal sensitivity request as a sensitivity order pursuant to s 26 of the Inquiries Act;
  - 46.2 Unless otherwise advised by the Commission, the Parties will proceed on the basis that the Commission agrees to the redaction of the Irrelevant Personal Information, without the need for formal orders (e.g. pursuant to s 12 of the Inquiries Act or any Practice Directions issued by the Commission);
  - 46.3 If the Commission does not wish to admit to evidence or publish information identified as Irrelevant Personal Information:
    - (a) only the redacted version of the document will be made publicly available by the Commission; and
    - (b) if the Commission nevertheless wishes to refer to or call a non-executive person to whom personal identifying information relates to give evidence before the Commission, the Commission will give the person a pseudonym (e.g. job title) that can be used in those circumstances.
  - 46.4 If the Commission wishes to admit to evidence or publish information identified as Irrelevant Personal Information, the process in clauses 27-28 apply, as if the State had made a request under s 26 of the Inquiries Act;

*Culturally sensitive information*

47. The Parties acknowledge that the State is in possession of information that is or may be culturally sensitive, which is likely to be relevant to the Commission's work.
48. For the purposes of the Protocol, 'culturally sensitive information' comprises information that is on the Victorian Aboriginal Heritage Register (**Register**) (subject to Division 3 of Part 9 of the *Aboriginal Heritage Act 2006* (**AHA**) and deemed sensitive under section 146A of the AHA.
49. On receipt of a Notice from the Commission, as soon as possible (and wherever practicable within three to five business days before the specified time for production (or one business day, where the return date of the Notice is less than

seven business days from its issue date)), the State will notify the Commission in accordance with the form at Schedule C if the Notice captures documents potentially containing culturally sensitive information on the Register, and provide a high-level description of:

- 49.1 the nature of the document(s);
- 49.2 the information considered to be potentially sensitive (including wherever practicable, identifying specific pages and/or paragraphs); and
- 49.3 the Traditional Owner group and/or individual(s) that the information relates to (if applicable),

in order for the Commission to be in a position to confirm whether it is required to be produced under the Notice.

- 50. If following the process in clause [49] the Commission confirms that it requires the production of a copy of the document containing the culturally sensitive information, the Commission may (at its discretion) elect to consult directly with any relevant Traditional Owner group with respect to the handling of information in an appropriate manner, noting that:
  - 50.1 the primary Traditional Owner party with which the Commission would expect to consult is the relevant Registered Aboriginal Party, although the Commission may consult with additional other Traditional Owners or First Peoples, at its discretion; and
  - 50.2 the Commission will take steps to maintain confidentiality over any documents to which a consulted party would not otherwise have had access.
- 51. Notwithstanding the processes in clauses [49] - [50], unless the Commission issues a further written notice varying or revoking the Notice, the State must comply with the Notice and produce the requested documents (including any information appearing on the Register) within the specified time for production.
- 52. If there is no Traditional Owner group, or input is unable to be obtained within a reasonable timeframe, the Commission will consider and determine how the information is to be handled and stored. The Commission may, at its discretion, elect to consult with the Victorian Aboriginal Heritage Council in such circumstances.
- 53. The Commission will retain information identified as being culturally sensitive in accordance with this Protocol on a secure database in accordance with its Indigenous Data Sovereignty Protocols and any additional processes it agrees with the Traditional Owner group (if applicable).
- 54. Nothing in this Protocol prevents the State from notifying relevant Traditional Owner groups, individuals and/or First Nations peoples through a Notice in an agreed form, as set out in Schedule D, prior to the production of any culturally

sensitive information as defined in paragraph 48 (as information on the Register). Where possible, the State must notify Yoorrook at least three business days prior to issuing any notice to relevant Traditional Owner groups, individuals and/or First Nations peoples. Any related consultations between the State and the Traditional Owner groups, individuals and/or First Nations peoples must:

- 54.1 explain, and seek to promote confidence in, the Commission's:
    - (a) functions and powers under the *Inquiries Act 2014* (Vic); and
    - (b) relevant Indigenous Data Sovereignty procedures;
  - 54.2 encourage any requests for further information or concerns to be directed to a nominated officer at the Commission; and
  - 54.3 not affect the State's obligation to produce documents in a timely manner in accordance with a Notice.
55. In the event that the State seeks to notify relevant Traditional Owner groups, individuals and/or First Nations peoples prior to the production of any information that is not on the Register, the State must:
- 55.1 where possible, notify Yoorrook at least three business days prior to any notification of relevant Traditional Owner groups, individuals and/or First Nations peoples;
  - 55.2 issue the Notice in an agreed form, as set out in Schedule E, prior to the production of that information; and
  - 55.3 in any subsequent consultations, comply with the requirements set out in sections 54.1-54.3.

*Delegation in relation to this Protocol*

56. The Commission and the State acknowledge that the Chairperson of the Commission may, in writing, delegate the power to sign deeds such as this Protocol or any variations to it to the CEO, Counsel Assisting or head of Solicitors Assisting, as the case may require, including to facilitate actions under this Protocol.

*Variation*

57. This Protocol may be varied in writing by the Chairperson of the Commission and an authorised representative of the State at any time.

**Executed** as a Memorandum of Understanding



.....  
Professor Eleanor Bourke  
Chairperson, Yoorrook Justice Commission

Dated: 29/03/23



.....  
The Hon Gabrielle Williams MP  
Minister for Treaty and First Peoples, for and  
on behalf of the State of Victoria

Dated: 27/03/2023

***SCHEDULE A: Standard Protocols for document management***

Under the standard protocols, documents to which this Schedule applies:

1. *Storage*: will be stored in part of the Commission's document management system or systems with security applied to those documents which prevents access to the material by anyone other than the people who fall within item 2 (**Separate DMS**).
2. *Access within the Commission*: will only be open to access to the Commission's staff, including counsel, solicitors and consultants retained by Commission (**Permitted Persons**).
3. *Emailing and copying*: will not be attached to emails or otherwise forwarded by email (or other similar method of electronic communication) except amongst the Permitted Persons and will only be copied by the Permitted Persons, in both cases to the extent necessary to perform the functions of the Commission. For the avoidance of doubt, making copies does not include screen sharing (i.e. via videoconferencing facilities) between Permitted Persons, or summary notes shared between Permitted Persons.
4. *Inspection by persons other than the Permitted Persons*: will not be able to be inspected by persons other than the Permitted Persons without the State being given an opportunity to make submissions to the Commission. If the State wishes to make such submissions it must do so within two business days following it being notified of the Commission's intention to allow persons other than Permitted Persons to inspect such documents.
5. *Publication by the Commission*: will not be published or communicated on any publicly accessible database or through any publicly-available medium (e.g., internet) without the State being given an opportunity to make submissions to the Commission about the form and content of that publication. If the State wishes to make such submissions it must do so within five business days (or such other timeframe as may reasonably be required) following it being notified of the Commission's intention to publish or communicate the relevant document in the manner described above. The State's submissions may (at the discretion of Yoorrook, and following consultation with the State's representatives) be either redacted or withheld from publication in their entirety to preserve the confidentiality of the subject matter referenced.
6. *Admission into evidence*: will not be, and information disclosing their contents, will not be admitted into the evidence in hearings of the Commission other than on a confidential basis unless the State has been given the opportunity to make submissions to the Commission, including on whether the documents or information should only be admitted at a hearing from which the public has been excluded (and in relation to which the transcript is not published). As above, the State's submissions may (at the discretion of Yoorrook, and following consultation with the State's representatives) be either redacted or withheld from publication in their entirety to preserve the confidentiality of the subject matter referenced.

7. *Return of documents:* (as well as all copies of them, including those stored electronically) will be either permanently deleted from the Commission's databases or returned to the State when the Commission has completed its inquiry and reports or, should the Commission have no further use for a particular document, at that time, subject to any legal record keeping requirements imposed on the Commission.

**SCHEDULE B: Public Interest Immunity Categories**

When providing the Commission with Reasonable Excuse Documents subject to a public interest immunity claim, the State will outline the basis on which a claim of public interest immunity is made, generally against the categories outlined in Table 1 below (**Categories**). For the avoidance of doubt, the Commission is not obliged to accept any of the Categories as a sufficient legal basis to establish a claim of public interest immunity.

*Table 1: Public Interest Immunity Categories*

<b>Code</b>	<b>PII Category</b>	<b>Short-form description</b>
CiC	Cabinet documents	Documents directly or indirectly disclosing the deliberations of Cabinet.
Nat Sec	National security/public safety	Documents containing information the disclosure of which might prejudice national security or the protection of public safety.
IGR	Intergovernmental or international relations	Documents containing information the disclosure of which might harm relations with other States or countries, or divulge confidential information communicated by another government.
HLD A	High-level deliberative processes or advice (non-Cabinet)	Documents containing information disclosing the confidential high-level deliberative processes of government, or are produced for the purpose of formulating high-level government policy.
COI	Information provided on the basis that it would be kept confidential	Documents containing information obtained solely on the basis that it would be kept confidential (including, in some cases, because it was obtained by compulsive statutory processes which require that the information not be further disclosed)
CI	Confidential informers	Documents that contain information the disclosure of which could reveal the identity of a confidential informer.
IM	Investigative methodologies	Documents that contain information relating to confidential investigative methodologies.
OI	Ongoing investigations	Documents that contain information gathered in ongoing investigations where disclosure of that information would impede the performance of public duties.
LP	Legal Proceedings	Documents that would, if disclosed, prejudice legal proceedings in accordance with the Inquiries Act 2014 (Vic).
CFI	State's commercial or financial interests	Documents that contain information that would, if disclosed, prejudice the State's commercial or financial interests.

**SCHEDULE C: Notification re: Documents Containing Culturally Sensitive Information**

In accordance with clause 49 of the Protocol, the State hereby notifies the Commission that Notice to Produce [insert number] captures the documents set out below that potentially contain culturally sensitive information.

**1. Identifying #**

Name	
Description	
Date (entered or last updated)	
VAHR Register reference	
Information type	
Relevant page / paragraphs	
Traditional Owner group and/or individuals to which the information relates (if applicable / known)	

***SCHEDULE D: Notification of Traditional Owner Groups pre production (Register information)***

Dear [insert]

The State of Victoria has received a Notice to Produce from the Yoorrook Justice Commission (**Yoorrook**) requiring it to produce material to Yoorrook.

Yoorrook, established under Letters Patent dated 12 May 2021, is tasked with inquiring into past and ongoing injustices experienced by First Peoples in Victoria in all areas of life since colonisation.

To support its work, Yoorrook has the powers of a Royal Commission under the *Inquiries Act 2014* (Vic) (**Inquiries Act**), and amongst other matters, can compel State organisations and other relevant parties to produce copies of documents which are relevant to its inquiries.

We write to notify you that [Describe State Agency]:

- Has received a **Notice to Produce** [Ref No. XXX] (a copy of which is enclosed) from Yoorrook, which requires it to produce copies of those documents or things listed in the Schedule; and
- Has identified that these documents or things potentially contain culturally sensitive material registered on the Victorian Aboriginal Heritage Register (**Register**) referable to [insert Traditional Owner or First Nations individual or stakeholder].

Under the *Aboriginal Heritage Act 2006* (Vic), sensitive information on the Register can ordinarily only be accessed with the written approval of the relevant registered Aboriginal party or, if there is no relevant registered Aboriginal party, the Victorian Aboriginal Heritage Council. However, the State's legal obligations under the *Inquiries Act* mean that the information listed in the Notice to Produce must be provided to the Commission.

Consistent with the legal obligations of [Describe State Agency], the identified documents or things referred to in the Schedule will shortly be produced to Yoorrook, on a secure and confidential basis, and expressly labelled as containing potentially culturally sensitive information.

Yoorrook has adopted Indigenous Data Sovereignty procedures in respect of its work, including through the establishment of secure databases, and which provide for confidentiality and restricted access where appropriate.

The State recognises the significance of the work of Yoorrook, and is committed to supporting the ongoing truth-telling process and addressing the systemic injustices experienced by First Nations people.

Please contact Yoorrook directly via [Insert Yoorrook contact details] for any further information.

Yours faithfully

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### **Schedule**

1. [Insert description of document(s)]

**SCHEDULE E: Notification of Traditional Owner Groups pre production (non Register information)**

Dear [insert]

The State of Victoria has received a Notice to Produce from the Yoorrook Justice Commission (**Yoorrook**) requiring it to produce material to Yoorrook.

Yoorrook, established under Letters Patent dated 12 May 2021, is tasked with inquiring into past and ongoing injustices experienced by First Peoples in Victoria in all areas of life since colonisation.

To support its work, Yoorrook has the powers of a Royal Commission under the *Inquiries Act 2014* (Vic) (**Inquiries Act**), and amongst other matters, can compel State organisations and other relevant parties to produce copies of documents which are relevant to its inquiries.

We write to notify you that [Describe State Agency] has received a **Notice to Produce** [Ref No. XXX] (a copy of which is enclosed) from Yoorrook, which requires it to produce copies of those documents or things listed in the Schedule.

Consistent with the legal obligations of [Describe State Agency], the identified documents or things referred to in the Schedule will shortly be produced to Yoorrook, on a secure and confidential basis, and expressly labelled as containing potentially culturally sensitive information.

Yoorrook has adopted Indigenous Data Sovereignty procedures in respect of its work, including through the establishment of secure databases, and which provide for confidentiality and restricted access where appropriate.

The State recognises the significance of the work of Yoorrook, and is committed to supporting the ongoing truth-telling process and addressing the systemic injustices experienced by First Nations people.

Please contact Yoorrook directly via [Insert Yoorrook contact details] for any further information.

Yours faithfully

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**Schedule**

[Insert description of document(s)]