

NOTICE TO PRODUCE DOCUMENTS TO A ROYAL COMMISSION

26 May 2023

Secretary
Department of Families, Fairness and Housing

C/O Alanna Mitchell
Assistant Victoria Government Solicitor
Victorian Government Solicitor's Office

YOORROOK JUSTICE COMMISSION

A Royal Commission established under Letters Patent dated 12 May 2021, known as the Yoorrook Justice Commission (**Yoorrook**), is being held to inquire into and report on historical and ongoing Systemic Injustices against First Peoples in Victoria, and related matters.¹

What you must do

You must produce the documents and things described in the Schedule below by email to:

By email: Legal@yoorrook.org.au
Ben.Kiely@au.kwm.com
Emily.Heffernan@au.kwm.com

By 4pm on **2 June 2023**.

Objecting to this notice

You may object to this notice if you have (or will have) a reasonable excuse for failing to comply with the notice. For example, it is a reasonable excuse to fail to comply with the notice if you are prohibited from disclosing the document/s or other thing/s by a court order. See section 18 of the *Inquiries Act 2014* (Vic) (**Act**) for further examples of what constitutes a reasonable excuse.

You may also object to the notice by claiming that the document/s or thing/s specified in the Schedule are not relevant to the subject matter of Yoorrook.

If you wish to object to this notice, you must do so in writing by email to:

By email: Ben.Kiely@au.kwm.com
Emily.Heffernan@au.kwm.com

on or before 4pm on **2 June 2023**.

Your written objection must outline your reasons for objecting. If Yoorrook is satisfied that your claim is made out, Yoorrook may vary or revoke this notice.

Failure to comply with this notice without a reasonable excuse may constitute a criminal offence. The maximum penalty for this offence is 240 penalty units or imprisonment for two years. See section 46 of the Act.

¹ The terms of reference of Yoorrook are set out as Annexure A to this notice.

Failure to comply with this notice without a reasonable excuse may also result in Yoorrook making an application to the Supreme Court of Victoria. The Court may then order you to comply with the notice within a specified period. See section 23 of the Act.

Dated **26 May 2023**



.....
Professor Eleanor A Bourke
Chairperson of the Yoorrook Justice Commission

SCHEDULE

DEFINITIONS

Whereby:

- **CYFA** means the *Children, Youth and Families Act 2005* (Vic); and
- **Relevant Period** means 1 January 2020 to 1 May 2023.

REQUIREMENTS

1. For the Relevant Period, the Terms of Reference and final authorised copies of the minutes for each of the following forums and committees:
 - (a) Out-of-Home Care Agreements Departmental Governance Group;
 - (b) Out-of-Home Care Agreements Partners Governance Group;
 - (c) Child Link Board;
 - (d) Dhelk Dja Partnership Forum; and
 - (e) Children's Services Coordination Board.
2. Legal advice specifically related to whether section 18 of the CYFA is fit for purpose.
3. The most recent independent audit report of the Human Services Standard.

NOTES

1. *Rights and obligations arising from this notice*

Annexure B to this notice sets out the rights and obligations of a recipient of a notice issued under section 17 of the *Inquiries Act 2014* (Vic).

2. *Meaning of 'document'*

In this notice, 'document' includes, in addition to a document in writing:

- (a) any book, map, graph or drawing;
- (b) any photograph;
- (c) any label, marking or other writing which identifies or describes anything of which it forms part, or to which it is attached by any means whatsoever;
- (d) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;
- (e) any film (including a microfilm), negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;
- (f) anything whatsoever on which is marked any words, figures, letters or symbols which are capable of carrying a definite meaning to persons conversant with them.

3. *Production electronically*

To comply with this notice, you must produce the documents described in the Schedule via a secure data transfer link, which will be provided to you upon request. To request the secure data transfer link, please email legal@yoorrook.org.au

Please specify the Notice to Produce reference number in the subject line of your email. In the body of your email, please identify the name(s) and email address(es) of the person(s) who require access to the secure data transfer link to upload the data.

Production must be in accordance with the Yoorrook Document Management Protocol.

4. *Production of things*

You may comply with this notice by delivering the things sought by the notice which are unable to be produced in electronic form to the address specified in the notice.

5. *Practice Directions*

You should consult all relevant practice directions published by Yoorrook on its website prior to production.

ANNEXURE A

Definitions

Capitalised terms in the terms of reference are defined terms in the Letters Patent and have the same meaning in this Annexure A as in the Letters Patent.

Terms of Reference

The Letters Patent dated 12 May 2021 require and authorise Yoorrook to inquire into and report on the following matters:

- (a) Historical Systemic Injustice perpetrated by State and Non-State Entities against First Peoples since the start of Colonisation, including but not limited to:
 - (i) cultural violations such as breach and denial of First Peoples' law and lore;
 - (ii) theft, misappropriation and destruction of cultural knowledge and property;
 - (iii) eviction, displacement and dispossession;
 - (iv) massacres, wars, killing and genocide or other acts of a similar gravity;
 - (v) protectionist and assimilationist policies, including forced removal of children and attempts to eradicate language, culture or identity;
 - (vi) unfair labour practices, including treatment of returned soldiers;
 - (vii) unfair policies and practices relating to policing, youth and criminal justice, incarceration, detention, and the broader legal system;
 - (viii) unfair policies and practices relating to child protection, family or welfare matters;
 - (ix) unfair policies and practices relating to health and healthcare;
 - (x) invasion of privacy and the collection, possession and use of information and data about First Peoples; and
 - (xi) practices of structural and systemic exclusion of First Peoples from Victorian economic, social and political life;
- (b) Ongoing Systemic Injustice perpetrated by State Entities and Non-State Entities against First Peoples, including but not limited to the areas of:
 - (i) policing, youth and criminal justice, incarceration, detention, and the broader legal system;
 - (ii) child protection, family or welfare matters;
 - (iii) health and healthcare;
 - (iv) invasion of privacy and the collection, possession and use of information and data about First Peoples;
 - (v) economic, social and political life; and
 - (vi) any other ongoing Systemic Injustice considered appropriate by the Royal Commission;
- (c) The causes and consequences of Systemic Injustice, including a historical analysis of the impact of Colonisation and an evaluation of the contemporary relationship between First Peoples and the State of Victoria and the impact of contemporary policies, practices, conduct and/or laws on First Peoples;
- (d) How historical Systemic Injustice can be effectively and fairly acknowledged and redressed in a culturally appropriate way;
- (e) How ongoing Systemic Injustice can be addressed, and/or redressed including recommended reform to existing institutions, law, policy and practice and considering how the State of Victoria can be held accountable for addressing these injustices and preventing future injustice;
- (f) How best to raise awareness and increase public understanding of the history and experiences of First Peoples before and since the start of Colonisation; and
- (g) Any other matters related to these Terms of Reference necessary to satisfactorily inquire into or address the Terms of Reference.

ANNEXURE B

STATEMENT OF RIGHTS AND OBLIGATIONS OF A PERSON SERVED WITH A NOTICE UNDER SECTION 17 OF THE *INQUIRIES ACT 2014* (VIC)

Failure to comply with a notice

- 1 Pursuant to section 46 of the *Inquiries Act 2014* (Vic) (**Act**), a person served with a notice under section 17 of the Act (**Notice**) must not, without reasonable excuse, fail to comply with the Notice.

It is a criminal offence to refuse or fail to produce a document or other thing to the Royal Commission without reasonable excuse. The maximum penalty for this offence is 240 penalty units or 2 years imprisonment.

Person may make a claim that he/she has a reasonable excuse for failing to comply with a notice to produce

- 2 Subsection 18(1)(a) of the Act provides that a person on whom a notice is served may make a claim to the Royal Commission that the person has or will have a reasonable excuse for failing to comply with the notice.
- 3 Without limiting what may be a reasonable excuse for the purposes of subsection 18(1)(a), subsection 18(2) of the Act provides that it is a reasonable excuse for a person to fail to comply with a notice by refusing to give information to the Royal Commission if the information:
- (a) in the case of a natural person, might tend to incriminate the person or make the person liable to a penalty; or
 - (b) is the subject of parliamentary privilege; or
 - (c) is the subject of public interest immunity; or
 - (d) is prohibited from disclosure by a court order; or
 - (e) is prohibited from disclosure by a provision of another enactment that specifically applies to the giving of information or the production of documents or other things to a Royal Commission; or
 - (f) is prohibited from disclosure by a provision of another enactment that is prescribed by the regulations for the purposes of section 34 of the Act.

Person may make a claim that a document or other thing specified in the notice is not relevant

- 4 Subsection 18(1)(b) of the Act provides that a person on whom a notice is served may make a claim to the Royal Commission that a document or other thing specified in the notice is not relevant to the subject matter of the inquiry.

Royal Commission may vary or revoke the notice

- 5 Subsection 18(3) of the Act provides that if the Royal Commission is satisfied that the person's claim under sub-section 18(1)(a) or (b) is made out, the Royal Commission may, by further written notice served on the person, vary or revoke the notice.
- 6 Subsection 18(4) of the Act provides the Royal Commission, by further written notice served on a person, may at any time on its own initiative vary or revoke a notice to produce or notice to attend served on the person.

Legal professional privilege does not apply

- 7 Pursuant to subsection 32(1) of the Act, it is not a reasonable excuse for a person to refuse or fail to give information (including answering a question) or produce a document or other thing to the

Royal Commission on the grounds that the information, document or other thing is subject to legal professional privilege.

- 8 Pursuant to subsection 32(2) of the Act, information or a document or other thing does not cease to be the subject of legal professional privilege only because it is given or produced to a Royal Commission with a requirement to do so under the Act.

Privilege against self-incrimination does not apply

- 9 Pursuant to subsection 33(1) of the Act, it is not a reasonable excuse for a person to refuse or fail to comply with a requirement to give information (including answering a question) or produce a document or other thing to the Royal Commission on the grounds that such production might tend to:

- (a) incriminate the person; or
- (b) make the person liable to a penalty.

- 10 Pursuant to subsection 33(2) of the Act, subsection 33(1) does not apply to the refusal or failure to give information or produce a document or other thing if:

- (a) proceedings for an offence with which the person has been charged have not finally been disposed of; or
- (b) proceedings for the imposition or recovering of a penalty that have been commenced against the person have not finally been disposed of.

Statutory secrecy and confidentiality

- 11 Pursuant to subsection 34(1) of the Act, it is not a reasonable excuse for a person to refuse or fail to comply with a requirement to give information (including answering a question) or produce a document or other thing to the Royal Commission on the grounds that another enactment prohibits the person from giving the information or producing the document or other thing or imposes a duty of confidentiality on the person in relation to the information, document or other thing.

- 12 Pursuant to subsection 34(2) of the Act, a person is not subject to any criminal, civil, administrative or disciplinary proceedings or action only because the person complies with the requirement to give the information (including answering a question) or produce the document or other thing to the Royal Commission.

- 13 Pursuant to subsection 34(3) of the Act, subsections 34(1) and (2) do not apply to:

- (a) a provision of another enactment that specifically applies to the giving of information or the provision of documents or other things to a Royal Commission; or
- (b) a provision of another enactment that is prescribed by the regulations for the purposes of this section.

Publication of information relating to Royal Commission inquiries

- 14 Pursuant to subsection 24(1) of the Act, the Commissioner may make an order excluding any person from a proceeding of the Royal Commission if:

- (a) prejudice or hardship might be caused to any person, including harm to their safety or reputation; or
- (b) the nature and subject matter of the proceeding is sensitive; or
- (c) there is a possibility of any prejudice to legal proceedings; or
- (d) the conduct of the proceeding would be more efficient and effective; or

(e) the Commissioner otherwise considers the exclusion appropriate.

15 Pursuant to subsection 26(1) of the Act, subject to subsection 26(2), the Commissioner may make orders prohibiting or restricting the publication of:

(a) any information that may enable the identity of a person who has given, or is to give, information or evidence to the Royal Commission for the purposes of an inquiry to be ascertained; or

(b) any information or evidence given to the Royal Commission for the purposes of an inquiry.

16 Pursuant to subsection 26(2) of the Act, the Commissioner may make orders prohibiting or restricting the publication of information or evidence if:

(a) prejudice or hardship might be caused to any person, including harm to their safety or reputation; or

(b) the nature and subject matter of the information is sensitive; or

(c) there is a possibility of any prejudice to legal proceedings; or

(d) the conduct of the proceeding would be more efficient and effective; or

(e) the Commissioner otherwise considers the prohibition or restriction appropriate.

It is an indictable offence to knowingly or recklessly contravene an order made under section 24(1) or 26(1) of the Act. The maximum penalty for an offence is 600 penalty units or imprisonment for 5 years.

Admissibility of answers, information, documents and other things

17 Pursuant to subsection 40(1) of the Act, any answer, information, the production of a document or other thing to the Royal Commission and the fact that the answer, information, document or other thing was produced is not admissible in evidence against the person in any other proceedings (being criminal, civil or administrative proceedings before a court, tribunal or person acting judicially or disciplinary proceedings), except in proceedings for:

(a) an offence against the Act; or

(b) an offence against sections 254 or 314 of the *Crimes Act 1958* (Vic) in relation to Royal Commissions.

Production of false or misleading information

18 Pursuant to subsection 50(1) of the Act, a person must not make a statement to a Royal Commission that the person knows to be false or misleading in a material particular.

19 Pursuant to subsection 50(2), a person must not produce a document or other thing to a Royal Commission that the person knows to be false or misleading in a material particular unless the person indicates to the Royal Commission the respect in which it is false or misleading and, to the extent practicable, provides the correct information.

It is an offence to make a statement or produce a document or other thing to a Royal Commission that the person knows to be false or misleading in a material particular. The maximum penalty for this offence is 120 penalty units or 12 months imprisonment.