



Board of Inquiry into the McCrae landslide

PRACTICE DIRECTION NO. 2: LEAVE TO APPEAR

Released 3 April 2025

INTRODUCTION

- 1 This Practice Direction is issued under section 63(1) of the *Inquiries Act 2014* (Vic) (**Act**) and relates to participation in the public hearings that will be held as part of the work of the Board of Inquiry into the landslide that occurred on 14 January 2025 at McCrae within the Mornington Peninsula Shire Council (**McCrae Landslide**).
- 2 Section 62 of the Act permits the Board of Inquiry to allow, to the extent and in the manner determined by the Board of Inquiry, any person to appear or otherwise participate in its inquiry. This Practice Direction does not address the conduct of the public hearings which is addressed in *Practice Direction No. 3 - Hearings*.
- 3 This Practice Direction should be read in conjunction with the Act and the Order in Council under section 53(1) of the Act dated 18 March 2025 establishing the Board of Inquiry (**Order**), including the Board of Inquiry's terms of reference, which prevail to the extent of any inconsistency with this Practice Direction.
- 4 This Practice Direction, and any other practice directions issued by the Board of Inquiry, may be varied or replaced at any time. The Board of Inquiry may, at any time, depart from this Practice Direction if it considers it appropriate to do so, subject to the Act and the Order.



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LEAVE TO APPEAR AT THE PUBLIC HEARINGS

What is leave to appear?

- 5 The Board of Inquiry controls who participates in its public hearings. The Board of Inquiry will generally decide who will be asked to be witnesses. Leave to appear is the term used when the Board of Inquiry grants permission to a person or organisation to participate in its public hearings by allowing that person or organisation to ask questions of witnesses and make arguments or submissions to the Board of Inquiry.

When leave to appear is required and appropriate

- 6 Applications for leave to appear are only required where a person or organisation seeks to appear, other than as a witness, at the public hearings.

When leave to appear is not required

- 7 A person or organisation who is requested by the Board of Inquiry to be a witness does not require leave to appear *as a witness*. Further:
- 7.1 an organisation who is requested by the Board of Inquiry to be a witness may be legally represented at the public hearings without the need for further or separate authorisation;
- 7.2 a person who is requested by the Board of Inquiry to be a witness is not required to engage separate legal representation. However, if you would like separate legal representation, you should discuss that with the Solicitors Assisting the Board of Inquiry.
- 8 All persons or organisations who wish to do so will be able to make written submissions to the Board of Inquiry in accordance with the process outlined on the Board of Inquiry's website. A person or organisation does not need leave to appear in order to make a written submission.
- 9 Similarly, a person or organisation participating in consultations with the Board of Inquiry, for example at any community consultations, roundtable discussions or private sessions, does not need leave to appear in order to participate.



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Determining applications for leave to appear

- 10 A person or organisation may apply for leave to appear in accordance with the process outlined in paragraphs 20 to 23 (below).
- 11 In considering whether an application for leave to appear will be granted to a person or organisation seeking it (an **applicant**), in accordance with section 62(2) of the Act, the Board of Inquiry may have regard to the following factors:
 - 11.1 whether the person has any direct or special interest in the subject matter of the inquiry;
 - 11.2 the likelihood that the Board of Inquiry may make an adverse finding against the person;
 - 11.3 the ability of the person to assist the Board of Inquiry in its inquiry;
 - 11.4 the age of the person; and
 - 11.5 any other matter the Board of Inquiry considers relevant.
- 12 For the purpose of section 62(2)(e) of the Act, the Board of Inquiry considers it relevant to consider whether, and if so how, granting leave to appear to the applicant would materially assist the Board of Inquiry during the public hearings over and above any written submissions the applicant might make to the Board of Inquiry.
- 13 An applicant will generally satisfy the criteria for leave to appear when the applicant:
 - 13.1 is the subject of a specific issue or issues the Board of Inquiry intends to investigate;
 - 13.2 may be the subject of an adverse finding; or
 - 13.3 is able to demonstrate that their participation in the hearing will materially assist the inquiry.

Scope of any leave granted

- 14 Leave to appear may be sought and/or granted on a conditional or unconditional basis. An applicant will be informed whether leave is granted conditionally or unconditionally when the applicant's application for leave to appear is determined.



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- 15 Leave to appear may be conditional when an applicant's direct or special interest is limited to a specific issue or issues which will be the subject of the Board of Inquiry's inquiry, or as otherwise determined by the Board of Inquiry having regard to the applicant's application for leave to appear.
- 16 An applicant granted leave to appear:
 - 16.1 may be legally represented at the public hearings without the need for further or separate authorisation; and
 - 16.2 is entitled to appear at, and participate in, the public hearings subject to any conditions on the grant of leave, the Board of Inquiry's control of the public hearings and to the extent the Board of Inquiry considers appropriate.
- 17 Where an applicant is granted leave to appear, the applicant or their legal representative may:
 - 17.1 apply to have evidence tendered or heard;
 - 17.2 apply for leave to examine or cross-examine a witness in accordance with any Practice Direction issued by the Board of Inquiry; and
 - 17.3 make submissions about potential findings and recommendations to the Board of Inquiry following the conclusion of the public hearings.
- 18 No general, open-ended right to tender evidence, examine or cross-examine will be granted to any applicant.
- 19 Leave to appear before the Board of Inquiry may, at any time, be varied or withdrawn by the Board of Inquiry, or made subject to altered or additional limitations or conditions.



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APPLICATIONS FOR LEAVE TO APPEAR

- 20 Applications for leave to appear should be made on the attached Application for Leave to Appear at the Public Hearings form and should:
 - 20.1 identify the particular subject matter of the inquiry or specific issue or issues that may be the subject of public hearings in relation to which the applicant has a direct or significant interest; and
 - 20.2 be accompanied by a short submission of no more than two pages in support of the application.
- 21 Applications for leave to appear must be submitted at least seven days prior to the public hearings at which leave to appear is sought
- 22 The application and submission may be sent via email to solicitorsassisting@mccraeinquiry.vic.gov.au
- 23 Applications will generally be determined on the papers with the outcome of the application communicated to the applicant (or the applicant's legal representative). Alternatively, applicants may be notified that they will be required to appear before the Board of Inquiry on a specified date for their application to be considered.



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APPLICATION FOR LEAVE TO APPEAR AT THE PUBLIC HEARINGS

Name of person or
organisation seeking leave
to appear (**Applicant**)

Name(s) of lawyer/law
firm representing the
Applicant (if any)

Name(s) of Counsel (if
any)

Contact person(s) and
details

Name

Address

Telephone number(s)

Email address

Please **attach** a short submission of no more than two pages addressing the following matters (to the extent relevant):

- whether the applicant has any direct or special interest in the subject matter of the inquiry;
- the likelihood that the Board of Inquiry may make an adverse finding against the applicant;
- the ability of the applicant to assist the Board of Inquiry in the inquiry;
- the age of the applicant; and



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- whether, and if so how, granting leave to appear to the applicant would materially assist the Board of Inquiry during the public hearings over and above any written submissions the applicant might make to the Board of Inquiry.

The application and submission should be lodged via email to **solicitorsassisting@mccraeinquiry.vic.gov.au**.