



Board of Inquiry into the McCrae landslide

PRACTICE DIRECTION NO. 3:

HEARINGS

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 public hearings to be conducted 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 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.
- 3 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.

FOCUS OF HEARINGS

- 4 One of the ways in which the Board of Inquiry will inform itself is by conducting public hearings. This Practice Direction outlines the Board of Inquiry's approach to its public hearings.
- 5 Persons seeking to participate in the public hearings should consult *Practice Direction No. 2 – Leave to Appear*, which relates to applications for leave to appear.



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- 6 In accordance with the terms of reference set out in the Order, the public hearings will inquire into:
 - 6.1 the cause(s) of the McCrae Landslide;
 - 6.2 the actions (including any inaction) and decisions of Connected Parties, including:
 - 6.2.1 actions taken to prevent or mitigate landslides and landslips in the McCrae Area;
 - 6.2.2 actions and/or decisions taken that may have contributed to causing the McCrae Landslide (including, without limitation, approving and issuing permits, and undertaking building, road, water or other works);
 - 6.3 the adequacy of any risk assessments undertaken to determine the likelihood and severity of landslides and landslips in the McCrae Area before the McCrae Landslide;
 - 6.4 the adequacy of preventative and mitigative measures taken before the McCrae Landslide, including actions that could have been but were not taken by Connected Parties;
 - 6.5 any barriers to the implementation of measures to prevent or mitigate landslides and landslips in the McCrae Area that existed before the McCrae Landslide occurred;
 - 6.6 the regulatory framework, including the responsibilities, powers, duties and functions of all responsible authorities in relation to the prevention and management of landslides and landslips in Victoria; and
 - 6.7 any measures for the prevention or mitigation of the risk of similar landslide events to the McCrae Landslide occurring in future in the McCrae Area.



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Definitions:

Connected Parties include Responsible Authorities, contractors undertaking any works in the area and other parties with direct interests in the area.

McCrae Area refers to the suburb of McCrae in the Shire of Mornington Peninsula local government area.

Responsible Authorities include the Mornington Peninsula Shire Council, water authorities, the Department of Transport and Planning, the Victorian Building Authority, and any other relevant entity established under legislation that had any function or responsibility or took any action in relation to landslides or landslips in the McCrae Area.

DATES OF HEARINGS

- 7 The Board of Inquiry may schedule or cancel public hearings as it considers it appropriate to do so. Hearing dates will be published on the Board of Inquiry's website in due course.

ACCESS TO PUBLIC HEARINGS

- 8 The location(s) of the public hearings will be published on the Board of Inquiry's website in due course.
- 9 Members of the public, including the media, are invited to attend. Public hearings may also be conducted online, at the Board of Inquiry's discretion.
- 10 Subject to any direction or order of the Board of Inquiry to the contrary, the public hearings will generally be open to the public.
- 11 Some of the evidence given at the public hearings may be subject to orders that prohibit or restrict the publication of information (discussed below) and some hearings may be closed to the public (discussed below).



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RULES OF EVIDENCE

- 12 In accordance with section 61 of the Act, the Board of Inquiry is not bound by the rules of evidence.
- 13 Subject to compliance with the Act (and any other Act), regulations made under the Act, the Order, and the requirements of procedural fairness, the Board of Inquiry may conduct its inquiry in any manner it considers appropriate (section 59 of the Act).

WITNESSES

- 14 Subject to the control of the Chairperson of the Board of Inquiry, Counsel Assisting the Board of Inquiry will determine:
- 14.1 who is to be called as a witness at the public hearings;
 - 14.2 the questions the witnesses will be asked; and
 - 14.3 the order in which those witnesses are called and examined.
- 15 Witnesses to be called by Counsel Assisting may be identified from:
- 15.1 public submissions to the Board of Inquiry;
 - 15.2 consultations;
 - 15.3 other Board of Inquiry research activities; and
 - 15.4 submissions made by persons or organisations granted leave to appear (discussed below).
- 16 The Board of Inquiry may:
- 16.1 require production of a completed witness statement by issuing a notice to produce;
 - 16.2 receive the evidence of a witness orally, by written statement or both;
 - 16.3 request persons to give evidence, or serve persons required to give evidence with a notice to attend to compel them to give evidence (**Notice to Attend**) under section 64 of the Act;
 - 16.4 require witnesses to give evidence concurrently with other witnesses; and
 - 16.5 require witnesses to give evidence on more than one occasion.



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- 17 Proposed witnesses who are not legally represented may be assisted by Counsel Assisting the Board of Inquiry to prepare their witness statement.
- 18 Proposed witnesses who are legally represented:
- 18.1 must prepare their witness statement themselves, although they are permitted to seek advice and assistance from their legal representative; and
- 18.2 must follow the order, and address each of the topics and/or questions identified in the request or Notice to Attend to give evidence.
- 19 The Board of Inquiry will generally require witnesses to give evidence on oath or affirmation.

LEAVE TO CROSS-EXAMINE A WITNESS

- 20 The Board of Inquiry controls who participates in its public hearings. 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 Chairperson.
- 21 Details on how to apply for leave to appear are outlined in *Practice Direction No. 2 – Leave to Appear* and on the Board of Inquiry's website.
- 22 Subject to the control of the Chairperson, all witnesses will be called to give evidence and then be examined by Counsel Assisting. Where a person or organisation has been granted leave to appear, that person or organisation (or any legal representative) may also seek leave to examine or cross-examine a witness. Leave to examine or cross-examine a witness will be subject to the discretion of, and any limitations or conditions imposed by, the Chairperson.

RESTRICTED PUBLICATION ORDERS

- 23 The Board of Inquiry may, in accordance with section 73 of the Act, make an order prohibiting or restricting the publication of information and evidence (**Restricted Publication Order**).



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- 24 A Restricted Publication Order may prohibit or restrict the publication of:
- 24.1 any information that may enable the identity of a person who has given, or is to give, information or evidence to the Board of Inquiry for the purposes of the inquiry to be ascertained; or
 - 24.2 any information or evidence given to the Board of Inquiry for the purposes of the inquiry.
- 25 Section 73(2) of the Act provides that the Chairperson may make an order restricting the publication of information or evidence if:
- 25.1 prejudice or hardship might be caused to any person, including harm to their safety or reputation; or
 - 25.2 the nature and subject matter of the information is sensitive;
 - 25.3 there is a possibility of any prejudice to legal proceedings;
 - 25.4 the conduct of the proceeding would be more efficient and effective; or
 - 25.5 the Chairperson otherwise considers the prohibition or restriction appropriate.
- 26 The Board of Inquiry may make a Restricted Publication Order either on application or on its own motion.
- 27 A person, or their legal representative, may apply in writing for the making of a Restricted Publication Order if they have been:
- 27.1 issued with a request or served with a Notice to Attend requiring them to:
 - 27.1.1 appear before the Board of Inquiry to give evidence orally at a public hearing (that is, as a witness);
 - 27.1.2 prepare a witness statement; and/or
 - 27.1.3 produce any document or thing in their possession or control which the Board of Inquiry considers relevant to its inquiry; or
 - 27.2 granted leave to appear in respect of any witness or evidence to be given at a public hearing.



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- 28 Notice of any such application must be given to the Solicitors Assisting the Board of Inquiry as soon as possible once the basis for the application is identified and three business days before the relevant witness is required to appear before the Board of Inquiry. A person served with a notice to produce who wishes to apply for a Restricted Publication Order should make the application prior to the production date specified in the notice to produce.
- 29 All applications must be made in writing and must address the basis for the application with regard to the matters (where relevant) identified in section 73 of the Act (set out in paragraph 25 above).
- 30 Any Restricted Publication Orders will be placed on the door of the place where the public hearings are being conducted or in another place where notices are usually posted where the public hearings are being conducted. The Board of Inquiry may also publish the Restricted Publication Orders on its website.
- 31 Public hearings subject to a Restricted Publication Order may not be live streamed on the Board of Inquiry's website. Redactions may also be made to the hearing transcript prior to publication (discussed below).
- 32 Failure to comply with the terms of a Restricted Publication Order is an indictable offence subject to a penalty of 600 penalty units or imprisonment for 5 years (section 88 of the Act).¹

¹ As at 3 April 2025, a penalty unit is equivalent to \$197.59. Therefore, 600 penalty units is equivalent to \$118,554.00.



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EXCLUSION ORDERS (CLOSED HEARINGS)

- 33 The Board of Inquiry recognises the public interest in its hearings. The Board of Inquiry also recognises that in some circumstances, it may be necessary or appropriate to receive part or all of the evidence from a witness or witnesses in a restricted or closed hearing (**Exclusion Order**). Such orders may, for example, enable a witness to give their evidence privately with only certain people present in the hearing room, such as the Chairperson, Counsel Assisting, the Board of Inquiry's solicitors and staff, the legal representatives of any person or organisation with leave to appear at the relevant hearing and any support person for a witness. All other people, including media, may be required to leave the hearing room.
- 34 Closed hearings will not be live streamed on the Board of Inquiry's website.
- 35 The Board of Inquiry may make an Exclusion Order either on application or on its own motion.
- 36 A person, or their legal representative, may apply in writing for the making of an Exclusion Order if they have been:
- 36.1 issued with a request or served with a Notice to Attend, requiring them to appear before the Board of Inquiry to give evidence orally at a public hearing, or
 - 36.2 granted leave to appear in respect of any witness or evidence to be given at a public hearing.
- 37 Notice of any such application must be given to the Solicitors Assisting the Board of Inquiry as soon as possible once the basis for the application is identified and three business days before the relevant witness is required to appear before the Board of Inquiry.



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- 38 All applications must be in writing and must address the basis for the application with regard to the matters (where relevant) identified in section 71(1) of the Act. Under section 71(1), the Chairperson may exclude any person from a proceeding of the Board of Inquiry if:
- 38.1 prejudice or hardship might be caused to any person, including harm to their safety or reputation;
 - 38.2 the nature and subject matter of the proceeding is sensitive;
 - 38.3 there is a possibility of any prejudice to legal proceedings;
 - 38.4 the conduct of the proceeding would be more efficient and effective;
 - or
 - 38.5 the Chairperson otherwise considers the exclusion appropriate.
- 39 Any Exclusion Orders will be placed on the door of the place where the public hearings are being conducted or in another place where notices are usually posted where the public hearings are being conducted. The Board of Inquiry may also publish the Exclusion Orders on its website.
- 40 Public hearings subject to an Exclusion Order will not be live streamed on the Board of Inquiry's website. Redactions will also be made to the hearing transcript prior to publication (discussed below).
- 41 Failure to comply with the terms of an Exclusion Order is an indictable offence subject to a penalty of 600 penalty units or imprisonment for 5 years (section 88 of the Act).²

² As at 3 April 2025, a penalty unit is equivalent to \$197.59. Therefore, 600 penalty units is equivalent to \$118,554.00.



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PUBLICATION OF EVIDENCE

- 42 Subject to any direction or order of the Board of Inquiry to the contrary, the Board of Inquiry proposes to adopt the following procedures in respect of evidence given at the public hearings:
- 42.1 transcripts of evidence at the public hearings will be placed on the Board of Inquiry's website as soon as possible after it becomes available, and generally by 10.00 am the following day;
 - 42.2 witness statements of witnesses called to give evidence at the public hearings will be available on the Board of Inquiry's website as soon as possible after the witness has given evidence; and
 - 42.3 documents received into evidence at the public hearings will be available on the Board of Inquiry's website as soon as possible after the document has been tendered.

COMPLIANCE WITH NOTICES TO ATTEND

- 43 From time to time the Board of Inquiry may issue a Notice to Attend to a person to compel them to give evidence under section 64 of the Act.
- 44 Failure to comply with a Notice to Attend, without reasonable excuse, is an offence subject to a penalty of 240 penalty units or imprisonment for 2 years (section 86 of the Act).³
- 45 If the Chairperson is satisfied that a person has, without reasonable excuse, failed to comply with a Notice to Attend, the Chairperson may apply to the Supreme Court for an order under section 70 of the Act (section 70(1) of the Act). The Supreme Court may then order the person subject to the Notice to Attend to comply with the notice or requirement within a specified period (section 70(2) of the Act).

³ As at 3 April 2025, a penalty unit is equivalent to \$197.59. Therefore, 240 penalty units is equivalent to \$47,421.60



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- 46 Under section 87(1) of the Act, a person who is served with a Notice to Attend must not, without reasonable excuse:
- 46.1 refuse or fail to take an oath or make an affirmation when required to do so; or
- 46.2 refuse or fail to answer a question that the person is required to answer by the Board of Inquiry.
- 47 A failure to comply with section 87 is an offence subject to a penalty of 240 penalty units or imprisonment for 2 years (section 87 of the Act).⁴
- 48 A person served with a Notice to Attend may make a claim to the Board of Inquiry that the person has or will have a reasonable excuse for failing to comply with the notice (**Reasonable Excuse Claim**).
- 49 A person may make a Reasonable Excuse Claim in relation to a Notice to Attend by:
- 49.1 notifying the Solicitors Assisting the Board of Inquiry in writing of the claim, accompanied by a short written submission of no more than five pages setting out the basis upon which each claim is made, having regard to section 65 of the Act; and
- 49.2 making that claim three business days prior to the appearance date.
- 50 If the Board of Inquiry is satisfied the Reasonable Excuse Claim is established, it may vary or revoke the relevant Notice to Attend and will advise the person in writing.
- 51 If the Board of Inquiry is not satisfied the Reasonable Excuse Claim is established, it will advise the person in writing.
- 52 For Reasonable Excuse Claims in relation to a Notice to Produce documents, please see *Practice Direction No. 4 – Production of Documents*.

EXPENSES OF PARTICIPANTS

- 53 Participants in public hearings may be entitled to the payment of expenses (such as travel, meals and loss of income) (see section 82 of the Act).

⁴ As at 3 April 2025, a penalty unit is equivalent to \$197.59. Therefore, 240 penalty units is equivalent to \$47,421.60



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- 54 The Board of Inquiry will release an expenses policy and claim form and provide copies of these to witnesses at its public hearings.

PRIOR CONTACT WITH THE CHAIRPERSON

- 55 If a participant who is to appear before the Board of Inquiry:
- 55.1 has had prior contact with the Chairperson outside of the Board of Inquiry's processes; or
 - 55.2 otherwise considers that the Chairperson may have a conflict of interest,
- that participant (or someone on their behalf) is encouraged to bring that information to the Board of Inquiry's attention as soon as that issue is identified.
- 56 Prior contact may include, but is not limited to, involvement or contact in previous legal proceedings.
- 57 At least one week before the appearance date, that participant must provide the Board of Inquiry with a summary of the circumstances of that prior contact or perceived conflict of interest.
- 58 The Board of Inquiry will then consider that information and decide whether the Chairperson should declare the nature of the prior contact or perceived conflict of interest or how the Board of Inquiry will otherwise manage the issue.

RIGHTS AND RESPONSIBILITIES OF A PERSON PROVIDING INFORMATION

- 59 A person who gives information to the Board of Inquiry, including as a witness in a public hearing, has the same protection and immunity as a witness in Supreme Court proceedings (section 79(4) of the Act).
- 60 Any information given to the Board of Inquiry cannot be admitted as evidence or used against a person in any other proceedings, subject to limited exceptions (section 80 of the Act).



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- 61 It is an offence to make statements or provide information to the Board of Inquiry that is false or misleading (section 90 of the Act).
- 62 A person must not intentionally or recklessly engage in conduct that hinders, obstructs or causes serious disruption to a proceeding of the Board of Inquiry (section 89 of the Act). This may include hindering or obstructing a person from participating in a public hearing.
- 63 If a person gives information to the Board of Inquiry without breaking the law, that person's employer cannot take, or threaten to take, detrimental action against the worker (including dismissing them) because the worker has given, or because the person believes the worker has given or will give, information to the Board of Inquiry (section 91(1) of the Act). This includes giving information in a public hearing.

CONTACTING THE BOARD OF INQUIRY

- 64 Any person wishing to contact the Board of Inquiry about any matter dealt with in this Practice Direction or any other matter concerning the public hearings should contact the Solicitors Assisting the Board of Inquiry at solicitorsassisting@mccraeinquiry.vic.gov.au.