



## **PRACTICE DIRECTION NO. 4: PRODUCTION OF DOCUMENTS**

**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 the production and use of documents 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**). It sets out the Inquiry's guidance in relation to:
  - 1.1 The holding of potentially relevant documents by those providing documents to the Board of Inquiry;
  - 1.2 The provision of such documents to the Inquiry;
  - 1.3 The process by which Material Providers may make claims for reasonable excuse regarding the production of documents; and
  - 1.4 The receipt and handling of such documents by the Inquiry.
2. This Practice Direction is designed to facilitate the prompt delivery of documents to the Inquiry by ensuring that all Material Providers and the public are aware of and understand the Inquiry's procedures for the provision of documents to the Inquiry and how the Inquiry will treat such documents.
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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### DEFINITIONS

5. In this Practice Direction:

- 5.1 **Act** means the *Inquiries Act 2014* (Vic).
- 5.2 **Inquiry** means the Board of Inquiry into the McCrae Landslide, established under Part 3 of the Act.
- 5.3 **Notice** means a notice to produce served under section 64 of the Act or other compulsory process for compelling production of documents or information to the Inquiry.
- 5.4 **Restricted Publication Order** means an order, issued by the Inquiry under section 73(1) of the Act (on the grounds listed in section 73(2) of the Act), prohibiting or restricting the publication of information or evidence.
- 5.5 **Material Provider** means any person, institution or organisation, which has been asked to provide documents to the Inquiry or which has provided documents to the Inquiry. For the avoidance of doubt, this includes government departments.
- 5.6 **Document** means anything in which information of any description is recorded, whether in paper or electronic form, and includes, but is not limited to, reports, reviews, board/committee minutes, meeting/attendance notes, manuscript notes, memoranda, circulars, governing/constitutional documents, contract documents, legislation, letters/emails (internal and external), SMS and other instant messages, information from websites, guides/codes of conduct, policy documents/statements, articles, photographs, video and audio recordings, physical evidence, witness statements and their exhibits.
- 5.7 **Relevant documents** are those which, having regard to the Board of Inquiry's terms of reference, it is likely that the Inquiry (if aware of their existence) would wish to be provided with. They include, but are not limited to, documents relating to issues raised in the terms of reference [available here](#).



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### **PROVISION OF DOCUMENTS TO THE BOARD OF INQUIRY**

6. Any documents to be produced to the Inquiry should be produced in accordance with the requirements of this Practice Direction.
7. Generally, the Inquiry will first approach Material Providers with a request for documents or witness statements pursuant to a written Notice issued in accordance with section 64 of the Act. Before issuing a Notice, the Inquiry may, where possible and appropriate to do so, consult with the Material Provider on the content of a proposed Notice, including through provision of a draft Notice.
8. If any person thinks that they have relevant documents in their possession that should be produced to the Inquiry, they should please contact the Solicitor Assisting team via email at [solicitorsassisting@mccraeinquiry.vic.gov.au](mailto:solicitorsassisting@mccraeinquiry.vic.gov.au) identifying the material they have so that the Inquiry can consider whether to issue a Notice for that material.
9. Material Providers, including legal representatives, should provide documents requested by the Inquiry, together with any other documents they consider relevant, within the time limits specified by the Inquiry in the relevant Notice. In the event that an extension of time is sought, an application to the Inquiry in writing, through the Solicitors Assisting the Inquiry, should be made as soon as possible.
10. Documents will be held securely when in the custody of the Inquiry. The Inquiry will maintain an electronic database using the Relativity platform that will contain, among other things, copies of all material produced to the Inquiry including material produced in response to a Notice, informal requests for information and all other documents obtained by the Inquiry.
11. Material Providers are requested to undertake comprehensive, thorough and rigorous searches in response to a Notice. The Inquiry expects that once a Material Provider has identified relevant documents in response to a Notice, every care is taken to ensure that all such documents are preserved in their original form.
12. Original copies of documents provided electronically should not be destroyed during the life of the Inquiry.



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13. Documents should be produced to the Inquiry in the form and manner set out in Annexure A to this Practice Direction.

### CLAIMS OF A REASONABLE EXCUSE FOR NOT COMPLYING WITH A NOTICE

14. The Inquiry requires that all documents be produced in a clean, native format without any redactions applied. The Inquiry acknowledges that there may be instances where a Material Provider wishes to make a claim not to produce all or part of a relevant document for a reasonable excuse (**Reasonable Excuse Claim**).
15. A Reasonable Excuse Claim may include, but not be limited to:
- 15.1 Legal professional privilege;
  - 15.2 Parliamentary privilege;
  - 15.3 Public interest immunity.
16. If a Material Provider wishes to make a Reasonable Excuse Claim in response to a Notice to Produce, the following process is to be observed:
- 16.1 At the time of or prior to production in response to the Notice, the Material Provider is to provide an index identifying any documents over which reasonable excuse is claimed and must state the basis for the claim.
  - 16.2 The Inquiry will consider whether such documents may assist it to fulfil its terms of reference such that the document ought to be admitted into evidence, published, cited or otherwise referred to in the course of the Inquiry.
  - 16.3 If the Inquiry considers that it may wish to utilise the document, it will notify the Material Provider and give an opportunity for the Material Provider to provide submissions of no more than 2 pages in length within a specified timeframe, but no later than 3 business days, in support of the claim for reasonable excuse, or otherwise withdraw the claim.



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- 16.4 Where the Inquiry does not accept a document as being subject to a reasonable excuse, and agreement cannot be reached between the Inquiry and the Material Provider as to how that document should be dealt with, the Supreme Court will be requested to determine the claim.
17. Where the Inquiry accepts that the whole or part of a document is not to be published, the Inquiry may make a Restricted Publication Order pursuant to section 73 of the Act.
18. For a Reasonable Excuse Claim in relation to a Notice to Attend, please see *Practice Direction No. 3 - Hearings*.

### **DISCLOSURE AND HANDLING OF DOCUMENTS BY THE INQUIRY**

19. All Material Providers and those granted leave to appear before the Inquiry will be required to sign confidentiality undertakings regarding information received during the course of the Inquiry. All disclosures made to those entities and individuals by the Inquiry will be subject to the undertaking until such time as the document is made public by the Inquiry.
20. At the conclusion of the Inquiry, information will be handled in one or more of the following ways, as directed by the Inquiry:
- 20.1 transferred to The National Archives and/or the government sponsoring department;
  - 20.2 returned to original Material Provider(s); or
  - 20.3 disposed of under the terms of the *Public Records Act 1973* (Vic).