



Victoria Government Gazette

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**ELIZABETH THE SECOND, BY THE GRACE OF GOD
QUEEN OF AUSTRALIA AND HER OTHER REALMS AND TERRITORIES,
HEAD OF THE COMMONWEALTH:**

I, the Honourable Linda Dessau AC, the Governor of Victoria, with the advice of the Premier, under section 5 of the **Inquiries Act 2014** and all other enabling powers, appoint you

Professor Eleanor Bourke, as Commissioner and Chairperson, and Dr Wayne Atkinson, Professor the Honourable Kevin Bell AM QC, Sue-Anne Hunter and Distinguished Professor Maggie Walter as Commissioners

to constitute a Royal Commission to be known as the Yoo-rrook Justice Commission to inquire into and report on the matters specified in the Terms of Reference.

1. BACKGROUND

- The First Peoples include the traditional owners of the lands currently known as the State of Victoria, over which they maintain that their sovereignty was never ceded.
- First Peoples' experiences of Colonisation have included grave historic wrongs and past and ongoing injustices and intergenerational trauma.
- The State of Victoria acknowledges both the continuing impacts arising from historical injustices and the ongoing strength and resilience of First Peoples and survival of their living cultures, knowledge and traditions.
- The State of Victoria also acknowledges its responsibility to advance and uphold the human rights of Victorian citizens, including First Peoples, under the **Charter of Human Rights and Responsibilities Act 2006**, the **Advancing the Treaty Process with Aboriginal Victorians Act 2018**, the **Traditional Owner Settlement Act 2010**, native title rights and other rights protected by law.
- The State of Victoria acknowledges the importance of non-discrimination, uncovering truth, providing justice and reparation, supporting wellbeing and preventing further harm to First Peoples.
- Relevant human rights are also recognised in international human rights instruments, including the:
 - *United Nations Declaration on the Rights of Indigenous Peoples;*
 - *International Convention on the Elimination of All Forms of Racial Discrimination;*
 - *International Covenant on Civil and Political Rights;*
 - *International Covenant on Economic, Social and Cultural Rights;*
 - *Convention on the Prevention and Punishment of the Crime of Genocide;*
 - *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;*
 - *Convention on the Rights of the Child;*
 - *Convention on the Elimination of All Forms of Discrimination against Women;*
 - *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; and*
 - *Updated Set of principles for the protection and promotion of human rights through action to combat impunity.*

SPECIAL

- Hearing First Peoples' stories and acknowledging the truth about their experiences is essential for healing and justice for First Peoples. It will also contribute significantly to a public dialogue, providing a foundation for new and positive relationships between First Peoples, non-Aboriginal Victorians and the State of Victoria.
- The First Peoples' Assembly of Victoria and the State of Victoria have resolved to establish an independent Truth and Justice Commission to examine the extent and impact of Systemic Injustice against First Peoples in Victoria, and to recommend appropriate forms of redress and other steps to address Systemic Injustice.
- The Royal Commission will promote the advancement of treaty or treaties between the State of Victoria and First Peoples by providing a shared narrative of the impact of Colonisation, founded on First Peoples' voices. Its recommendations for how the State can build new and stronger relations with First Peoples will inform the treaty-making process and enrich the heritage of all Victorians.

2. OBJECTIVES

The objectives of this Royal Commission are to:

- a) establish an official public record based on First Peoples' experiences of Systemic Injustice since the start of Colonisation;
- b) develop a shared understanding among all Victorians of the individual and collective impact of Systemic Injustice and the intergenerational trauma that has flowed from them since the start of Colonisation;
- c) determine the causes and consequences of Systemic Injustice including the role of State policies and laws and which State Entities or Non-State Entities bear responsibility for the harm suffered by First Peoples since the start of Colonisation;
- d) develop a shared understanding among all Victorians of the diversity, strength and resilience of First Peoples' cultures, knowledge, and traditional practices;
- e) help build the foundations for a new relationship between First Peoples and the State of Victoria and all Victorians, based on truth and justice to prevent the recurrence of injustice;
- f) support the treaty-making process between the State of Victoria and First Peoples, including through the identification of subject matters for potential inclusion in a treaty or treaties; and
- g) identify Systemic Injustice which currently impedes First Peoples achieving self-determination and equality and make recommendations to address them, improve State accountability and prevent continuation or recurrence of Systemic Injustice.

3. TERMS OF REFERENCE

Having regard to the objectives set out above, and subject to the **Inquiries Act 2014**, you are appointed to inquire into and report on:

- 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.

4. CONDUCT OF THE INQUIRY

Without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, you are directed in the conduct of your inquiry to:

- a) Direct your attention to both historical Systemic Injustice and ongoing Systemic Injustice, applying appropriate methodologies and processes, noting this may require different approaches for the historical and contemporary purposes;
- b) Engage widely with First Peoples, including to determine priority areas of focus for the Royal Commission and by conducting your inquiries in rural and regional communities and carrying out events, media engagements, or public education activities, including at the request of affected communities;
- c) Have due regard to the views and insights provided by the First Peoples' Assembly of Victoria, in a report or reports from community consultation undertaken by it, to be provided to you by 30 June 2021;
- d) Regularly communicate with the Victorian community about your objectives and progress and encourage broad and inclusive participation in your work;

- e) Establish an Expert Advisory Committee within three months of the gazettal of the letters patent, to act as consultants to the Royal Commission that includes:
 - i. persons with expertise in First Peoples' history, cultural knowledge, information and data sovereignty and trauma, redress and healing;
 - ii. at least one person who is an impartial expert with at least 10 years' experience in a jurisdiction outside of Victoria in driving practical reform or transformation of entrenched norms, practices, legislation, and/or policy in large institutions, particularly experience in providing independent oversight of such institutions to drive government system reform through assessment of strategy, governance, accountability and outcomes of large organisations or institutions; and
 - iii. other experts, such as experts in comparative international processes and transitional justice and experts with any other particular expertise that you consider could assist you in achieving the objectives;
- f) Provide a safe, supportive and culturally appropriate forum for First Peoples to exercise their rights to truth and justice with dignity and demonstrate their cultural resilience and survival, including by:
 - i. receiving testimony from First Peoples who are victims, witnesses or survivors on their experiences and/or personal stories of historic injustice;
 - ii. recognising First Peoples' cultural and legal practices of story-telling and witnessing as legitimate and valid sources of evidence;
 - iii. accommodating to the extent possible First Peoples' choices in how they wish to participate, including their rights to free, prior and informed consent at all stages of participation;
 - iv. upholding the sovereignty of First Peoples over their knowledge and stories by consulting with them on how the information they provide should be treated and ensuring adequate information and data protection;
 - v. acknowledging and respecting differences between First Peoples, for example, through respecting different languages and practices;
 - vi. being responsive to the needs of participants in consultations, interviews and other activities; and
 - vii. providing culturally appropriate support to participants and affected communities as required;
- g) Adopt practices and approaches to minimise harm and re-traumatisation for First Peoples;
- h) Have due regard to, and coordinate as appropriate with, current and previous research, inquiries and processes in Australia and elsewhere, relevant to the subject matters and issues raised in this Royal Commission;
- i) Hold healing or commemorative ceremonies as considered appropriate having regard to the views of affected communities;
- j) Prioritise the employment of First Peoples by the Royal Commission;
- k) Provide, through the Royal Commission, culturally appropriate community outreach, mental health and counselling, research, administrative and operations staff;
- l) While noting that you are not asked to inquire specifically into, or report on, the actions of governments other than the State of Victoria, you should establish appropriate arrangements to assist the voluntary participation with the inquiry by persons or institutions (including the governments of the Commonwealth, the States and the Territories) located outside Victoria, which hold, or may hold, information relevant to the Terms of Reference;

- m) Not inquire into, or report on, any executive decisions or specific outcomes made in legal proceedings which have been settled or determined in relation to the recognition of Traditional Owners, including but not limited to those under the **Native Title Act 1993 (Cth)**, the **Traditional Owner Settlement Act 2010**, or the **Aboriginal Heritage Act 2006**; and
- n) Only inquire into, or report on, the specific outcomes of any other individual legal proceedings to the extent relevant to a pattern indicating Systemic Injustice.

5. RECOMMENDATIONS

You may make such recommendations arising out of your inquiry that you consider appropriate to achieve its objectives. This may include recommendations about practical actions and reforms needed in Victoria to provide effective redress for Systemic Injustice, address Systemic Injustice, and promote healing for First Peoples and the broader community, including but not limited to:

- a) appropriate forms of cultural restoration and healing for affected communities and individuals, including further truth-telling, memorialisation, commemorations or other activities;
- b) appropriate forms of public awareness and education strategies, including whether and if so, how, truth-telling and the outcomes of your inquiry can be embedded in the Victorian school curriculum;
- c) appropriate redress for Systemic Injustice that should be specifically designed and effectively implemented through the treaty process, particularly where such redress is not already available to First Peoples;
- d) policy, legislative, administrative or institutional reforms to address inequalities, remove systemic and structural injustices and prevent further harm;
- e) particular subject matters that should be included in a treaty or treaties with the State; and
- f) ongoing access and use of submissions, materials and records received and obtained in the course of the Royal Commission.

In formulating your recommendations, you may have regard to any matters you consider relevant including:

- g) the evidence of First Peoples, including information from community consultation provided by the First Peoples' Assembly of Victoria in accordance with paragraph 4(c);
- h) the advice of experts, including the Expert Advisory Committee;
- i) evidence from relevant organisations or workforces, including Aboriginal Community Controlled Organisations and the justice, health and social services sectors who work with First Peoples;
- j) international best practice in transitional justice and the rights of First Peoples; and
- k) the need to recognise and respect the needs and diversity of different First Peoples groups and communities.

Your recommendations should focus on actions that may be taken by the State of Victoria, State Entities, Non-State Entities and First Peoples, recognising the actions of other governments may be outside your jurisdiction.

6. DEFINITIONS

In these Letters Patent:

Colonisation means colonisation of the lands which are currently known as the State of Victoria since 1788.

First Peoples includes:

- a) all traditional owners of a place in the State of Victoria (including family and clan groups) and their ancestors; and
- b) Aboriginal and/or Torres Strait Islander persons who are living, or who in the time before or since the start of Colonisation lived, in Victoria.

Non-State Entity means any body, association, club, institution, organisation or group of persons or bodies of any kind (whether incorporated or unincorporated), and however described, including those that no longer exist, but does not include individual natural persons or a State Entity.

State Entity includes:

- a) any government, or entity exercising governmental power, over the lands currently known as the State of Victoria;
- b) any government, or entity exercising governmental power, over the lands previously known as the Colony of Victoria;
- c) any government, or entity exercising governmental power, over the lands currently known as the State of Victoria, including prior to the formal establishment of Victoria as a Colony or State; and
- d) public authorities (including a local council) of these governments (whether or not they still exist).

Systemic Injustice means harm and/or impacts on human dignity (including, but not limited to, those as understood by reference to the application of current human rights instruments, including to events prior to the making of such instruments) experienced by First Peoples, that are part of a systemic or structural pattern, and which involve any policies, practices, conduct or laws which existed since the start of Colonisation. Unless otherwise stated, Systemic Injustice includes both ongoing and historical systemic injustices. This definition is not intended to limit the Royal Commission's ability to inquire into and report on individual experiences.

7. REPORT

You are required to report your findings and recommendations to the Governor and to the First Peoples' Assembly of Victoria as soon as possible, and in any event no later than:

- a) an interim report by 30 June 2022, detailing progress to date, emerging themes and issues, and, if available, any initial findings or thematic areas that should be considered as immediate priorities through the Treaty making process; and
- b) a final report by 30 June 2024, including methodology, key findings and recommendations, as well as the publication of First Peoples' testimonies in accordance with information and data sovereignty protocols, to be established.

8. EXERCISE OF POWERS

You may exercise the powers of a Royal Commission in accordance with the **Inquiries Act 2014**. These powers may be exercised, at the discretion of the Chairperson, from time to time and by one or more Commissioners.

9. EXPENSES AND FINANCIAL OBLIGATIONS

You are authorised to incur expenses and financial obligations to be met from the Consolidated Fund up to \$44.445 million in conducting this inquiry.

These letters patent are issued under the Public Seal of the State.

WITNESS Her Excellency the Honourable Linda Dessau,
(L.S.) Companion of the Order of Australia, Governor
of the State of Victoria in the Commonwealth
of Australia at Melbourne this 12th day of
May 2021.

By Her Excellency's Command
THE HONOURABLE JAMES MERLINO MP
Acting Premier of Victoria

Entered on the record by me in the Register of Patents Book No 47 Page No 173 on the 12th day of May 2021.

JEREMI MOULE
Secretary, Department of Premier and Cabinet

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