



PRACTICE DIRECTION NO. 4:

PRIVATE SESSIONS

Released 12 September 2023

INTRODUCTION

- 1 This Practice Direction is issued under section 63(1) of the *Inquiries Act 2014* (Vic) (**Act**) and relates to the giving of information to the Board of Inquiry into Historical Child Sexual Abuse in Beaumaris Primary School and Certain Other Government Schools (**Board of Inquiry**) in private sessions (**Private Sessions**).
- 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 28 June 2023 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.

NATURE OF PRIVATE SESSIONS

- 4 Given the sensitive subject matter that the Board of Inquiry is considering, some people may not be able, or may not wish, to provide information at public hearings.
- 5 The Board of Inquiry may hold a Private Session to enable a participant to provide information face to face to the Chairperson and/or Counsel Assisting. By their nature, Private Sessions are not public hearings.
- 6 If a Private Session is held, it will usually only include the following people:
 - 6.1 the Chairperson and/or Counsel Assisting;
 - 6.2 a Board of Inquiry staff member;
 - 6.3 the participant who is giving information at that Private Session; and
 - 6.4 a person chosen by the participant to support them, if any.
- 7 Any support person who attends a Private Session must keep any information provided at the Private Session confidential. If a participant has a lawyer and wants them to attend the Private Session, they may do so.

DECISION TO CONDUCT PRIVATE SESSIONS

- 8 If a participant wishes to provide information to the Board of Inquiry at a Private Session, they should contact the Board of Inquiry by telephone on 8301 0102 or email at contact@beaumarisinquiry.vic.gov.au.
- 9 The Board of Inquiry will consider on a case by case basis whether it is appropriate to hold a Private Session.
- 10 The Board of Inquiry may choose to hold a Private Session based on the nature of the information a participant may wish to provide to the Board of Inquiry, taking into account a participant's preferences and circumstances.

LEGAL CONTEXT TO PRIVATE SESSIONS

- 11 Subject to the provisions of the Act, the conduct of a Private Session will be within the discretion of the Board of Inquiry.
- 12 Section 59 of the Act allows the Board of Inquiry to conduct its inquiry in any manner that it considers appropriate, subject to:
- 12.1 the requirements of procedural fairness; and
 - 12.2 the Order, including the terms of reference and any specifications as to the manner in which the inquiry of the Board of Inquiry is to be conducted (see section 53(2)(b)(v) of the Act); and
 - 12.3 the Act, the regulations and any other Act.
- 13 The Board of Inquiry is not bound by the rules of evidence (see section 61 of the Act).
- 14 If necessary, the Board of Inquiry may make an order prohibiting or restricting the public reporting of certain information (see section 73 of the Act).

DETAILS OF PRIVATE SESSIONS

- 15 The Board of Inquiry will determine the dates and locations of Private Sessions.
- 16 Generally, Private Sessions will last approximately one hour. Following the Private Session, participants will have the opportunity to meet privately with a psychologist or qualified counsellor.
- 17 Where the Board of Inquiry considers it necessary or appropriate to do so, Private Sessions may be conducted online, using remote access technology.

EXPENSES OF PARTICIPANTS

- 18 Participants in Private Sessions may be entitled to the payment of expenses (such as travel, meals and loss of income) (see section 82 of the Act).
- 19 The Board of Inquiry will release an expenses policy and claim form and provide copies of these to participants in Private Sessions.

USE OF PRIVATE SESSION INFORMATION

- 20 The Board of Inquiry will discuss with a participant their preferences regarding how any information they provide at a Private Session is used by the Board of Inquiry. Information provided during a Private Session will be managed in accordance with the Board of Inquiry's Providing Information to the Board of Inquiry document dated 7 September 2023.
- 21 A participant may provide some or all of the information during a Private Session **publicly**. This means that while the Board of Inquiry will keep a record of your identity, the Board of Inquiry may name or identify you as being the source of the information if it decides to make it public (including in its report).
- 22 A participant may provide some or all of the information during a Private Session **anonymously**. This means that while the Board of Inquiry will keep a record of your identity, the Board of Inquiry will not name or identify you as being the source of the information if it decides to make it public (including in its report).
- 23 A participant may provide some or all of the information during a Private Session **confidentially**. The Board of Inquiry will store confidential information in a particular way, including restricting who can access and use the information. While the information will generally inform the Board of Inquiry's work, the Board of Inquiry will not publish or quote the confidential information (including in its report).
- 24 Generally, the Board of Inquiry will not use information provided at a Private Session in its report unless:
- 24.1 that information is also provided to the Board of Inquiry in another way (for example,

through a written submission or at the public hearings);

24.2 that information does not disclose the identity, or lead to the identification, of the participant or any other relevant person; or

24.3 the participant consents to that information being included in its report.

25 There may be circumstances in which it may be necessary or appropriate for the Board of Inquiry to disclose information obtained during a Private Session, even where this has been provided anonymously or confidentially. This includes where the Board of Inquiry is subject to a legal requirement to disclose information, or if there is a risk to the safety, health or wellbeing of another person.

PRIOR CONTACT WITH THE CHAIRPERSON OR COUNSEL ASSISTING

26 If a participant who is to provide information in a Private Session:

26.1 has had prior contact with the Chairperson or Counsel Assisting outside of the Board of Inquiry's processes; or

26.2 otherwise considers that the Chairperson or Counsel Assisting 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.

27 Prior contact may include, but is not limited to, involvement or contact in previous legal proceedings.

28 At least one week before the participant is due to provide information in a Private Session, that participant must provide the Board of Inquiry with the following details:

28.1 the participant's full name; and

28.2 a summary of the circumstances of that prior contact or perceived conflict of interest.

29 The Board of Inquiry will then consider that information and decide whether the Chairperson, Counsel Assisting or another Board of Inquiry member of staff should conduct the Private Session.

RIGHTS AND RESPONSIBILITIES OF A PERSON PROVIDING INFORMATION

30 A person who gives information to the Board of Inquiry has the same protection and immunity as a witness in Supreme Court proceedings (section 79(4) of the Act). This includes a person who provides information in a Private Session.

31 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).

32 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).

33 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 participant from participating in a Private Session.

34 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 Private Session.