

INDIGENOUS DATA SOVEREIGNTY AND DATA GOVERNANCE

The Yoorrook Justice Commission is the first Inquiry, Royal Commission or truth-telling process to apply Indigenous Data Sovereignty principles to the collection, handling, storage and use of First Peoples' information.

This information sheet summarises key elements of Yoorrook's Indigenous Data Sovereignty and data governance policies in the case of information shared by First Peoples, which aim to ensure free, informed prior consent to any relevant use, publication and/or access.

1. BACKGROUND

What Is Indigenous Data Sovereignty and Data Governance, and why is it important?

Systemic injustice and Indigenous data are strongly linked.

First Peoples always recorded data, but colonial officials imposed their own ways of counting Indigenous populations, cultures and territories on Victorian First Peoples.

These harmful practices have continued, producing deficit data focused on First Peoples' disadvantage, disparity and deprivation.

These data ignore Indigenous sovereignty, cultural diversity and do not support self-determination.

Indigenous Data Sovereignty is an Indigenous-led movement. It seeks to change the way Indigenous data is understood and used through Indigenous data rights (Walter et al. 2020).

There are now four Indigenous Data Sovereignty networks globally. These include the Maïam nayri Wingara Indigenous Data Sovereignty Collective in Australia (<https://maimnayriwingara.org>).

All networks are members of the Global Indigenous Data Alliance (GIDA) (<https://GIDA-global.org>).

Key Terms

Indigenous Data Sovereignty asserts Indigenous rights in relation to data. Key terms include:

- **Indigenous Data Sovereignty** is the right of Indigenous Peoples to own, control, access and possess data that derive from them, and which pertain to their members, knowledge systems, customs, resources or territories (Kukutai & Taylor 2016; Snipp 2016).
- **Indigenous Data Governance** is the enactment of Indigenous Data Sovereignty and refers to the mechanisms that support Indigenous decision-making on how data are controlled, collected, interpreted, accessed, stored, and used (Walter et al. 2020).
- **Indigenous Data** refers to information, in any format, that is about Indigenous Peoples, knowledge systems, customs, resources or territories or that impacts Indigenous lives at the collective and/or individual level (Rainie et al. 2019; Lovett et al. 2019).

These definitions were collaboratively developed and formally adopted by national Indigenous Data Sovereignty networks (including in Australia) and the Global Indigenous Data Alliance.

Where were Indigenous Data Sovereignty Principles first expressed?

Maia Wingara, with the Australian Indigenous Governance Institute, led the development of Australian Indigenous Data Sovereignty Principles.

A 2018 Summit, comprising more than 40 First Peoples representatives from across Australia, agreed that First Peoples have the right to:

- Exercise **control** of the data ecosystem including creation, development, stewardship, analysis, dissemination and infrastructure.
- Data that is **contextual and disaggregated** (available and accessible at individual, community and First Nations levels).
- Data that is relevant and **empowers** sustainable self-determination and effective self-governance.
- Data structures that are **accountable** to Indigenous Peoples and First Nations.
- Data that is **protective** and respects First Peoples' individual and collective interests.

These core data rights inform the Yoorrook Justice Commission's approach to Indigenous Data Sovereignty in its processes and program of work.

2. YOORROOK'S MANDATE – INDIGENOUS DATA SOVEREIGNTY CONSIDERATIONS

Why is Data Sovereignty relevant to Yoorrook?

Indigenous Data Sovereignty considerations are expressly part of Yoorrook's mandate under the Letters Patent, as follows:

3. Terms of Reference

[Y]ou are appointed to inquire into and report on:

- (a) *Historic Systemic Injustice perpetrated by State and Non-State Entities against First Peoples since the start of Colonisation, including but not limited to:*

...

- (x). *invasion of privacy and the collection, possession and use of information about and data about First Peoples*

and

- (b) *Ongoing Systemic Injustice perpetrated by State Entities and Non-State Entities against First Peoples, including but not limited to the areas of:*

...

- (iv). *invasion of privacy and the collection, possession and use of information about and data about First Peoples.*

Furthermore, in the course of conducting its inquiries, Yoorrook is directed to take Indigenous Data Sovereignty considerations into account, as follows:

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:

- (e) *Establish an Expert Advisory Committee 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*

...

- (f) *Provide a safe, supportive and culturally appropriate forum including by:*

...

- (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.*

And finally, in the context of producing a final report, Yoorrook is again directed to take Indigenous Data Sovereignty considerations into account, as follows:

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:

- c) 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.*

3. RELEVANT SOURCES OF INFORMATION

Relevant First Peoples' information sources in the context of Yoorrook

Yoorrook expects that Indigenous Data Sovereignty and/or sensitive information considerations will arise in the case of a wide range of information which it gathers throughout the course of its inquiries under the Letters Patent, including:

Newly recorded information	<ul style="list-style-type: none">- Witness statements (including notes/records from interviews and conferences);- Written and online submissions;- Audio and video recordings, and photographs of Yoorrook's processes, including:<ul style="list-style-type: none">• Truth-telling forums (Yarning Circles, Workshops, Roundtables);• Hearings;• Site and community visits;- Transcripts (including of the processes outlined above); and- Artwork, music and other cultural materials performed or prepared specifically for Yoorrook.
Existing Information	<ul style="list-style-type: none">- Existing photos, videos, audio recordings concerning First Peoples, including as obtained from:<ul style="list-style-type: none">• Individuals and communities engaging with Yoorrook;• Museums, archives, other collections;- Individual, family or community records shared with Yoorrook; and- Government and organisation records concerning First Peoples.

First Peoples' information, including knowledge, stories and other information on experiences of past and present injustices is important, and will support Yoorrook's findings and recommendations for change.

To ensure it is safe for First Peoples to share their information, Yoorrook will apply Indigenous Data Sovereignty and Data Governance protocols and mechanisms.

4 ATTRIBUTION

Arrangements for First Peoples' information shared with Yoorrook

Information shared with Yoorrook by First Peoples will be recorded at the time of receipt and/or prior to use or publication as attributed to a relevant "Individual" or "Group" attribution, as follows:

Individual Attribution	Information which an individual shares with Yoorrook or which is identified as relating only to that individual, e.g. concerning their: <ul style="list-style-type: none">- individual, family or community experiences of current or historical systemic injustice; or- perspectives on priority areas of reform.
Group Attribution	Information which a First Peoples' group, family, community, organisation or other entity shares with Yoorrook or which is identified as relating only to that group e.g.: <ul style="list-style-type: none">- in a family, group or community submission, statement or via participation in a group-based truth-telling process; or- group/ community/organisation information or records shared with Yoorrook expressly on behalf of and with the authorisation of that group/ community/organisation.

Yoorrook acknowledges that it will also obtain records or material concerning First Peoples through other means e.g.

- under Notices to Produce (issued to Government agencies, organisations);
- through access to public archives;
- through co-operative processes with other information holders (e.g. Museums, Universities).

In the case of information obtained via these means, Yoorrook will initially attribute **Other Attribution**, as follows:

Other Attribution	Information concerning First Peoples obtained by Yoorrook in circumstances other than those described for Individual and Group Attribution information above.
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5. INDIGENOUS DATA GOVERNANCE MECHANISMS

Data Governance - Individual or Group Attribution

Individuals and groups to which information is attributed will directly decide their information protection.

In the case of information obtained directly from, or relating directly to, First Peoples individuals or groups (as the case may be), free, prior and informed consents and preferences will be sought wherever practicable as to arrangements in two key areas:

- **Use** and **publication** by Yoorrook; and
- **Future access** and **use** by third parties (noting that certain of the stated preferences will require legislative amendments to be implemented in practice, as is further explained below).

All individuals or groups to which information is attributed retain the right to change their decisions on information protection throughout the life of Yoorrook. However, a change in decision cannot be applied retrospectively to information that has already been made publicly available by Yoorrook with the consent of the relevant attributor(s) (such as in a report or other published materials).

Data Governance – Other Attribution

If Yoorrook proposes to use or publish information attributed to Other attributors, it will wherever practicable seek to identify attribution of individual or group owners to this information and obtain necessary consents and preferences. Where, however:

- such an individual or group attribution cannot be determined (e.g. a photo relating to First Peoples of unknown provenance); or
- it is not feasible for all those with links to the information to nominate their information protection preferences (e.g. Victorian Government documents or data sets pertaining to multiple First Peoples).

A recommendation as to use, publication and/or access may be sought from the First Peoples Data Governance Committee (FPDGC) (see Section 8: Data Governance – Advisory Bodies).

Use and Publication by Yoorrook

Individuals and groups to which information is attributed will be invited to nominate one of three positions regarding **use** and **publication** by Yoorrook:

Full Confidentiality	<p>The information is to be available to Yoorrook Commissioners, Staff and Solicitors and Counsel Assisting only (together, the Yoorrook team), whom include non-First Peoples.</p> <p>The information is not to be published and/or referenced, in a way that could identify the person or group contributing the information for example in:</p> <ul style="list-style-type: none">- Yoorrook's Interim or Final Report;- Other material published by Yoorrook; and/or- The official public record of First Peoples' experiences of systemic injustice since the start of colonisation, to be created by Yoorrook as a core part of its mandate (Letters Patent, paragraph 2(a)).
Partial Confidentiality	<p>The information is available to the Yoorrook team and can be published and/or referenced, for example in:</p> <ul style="list-style-type: none">- The Interim or Final Report;- Other material published by Yoorrook; and/or- The official public record of First Peoples' experiences of systemic injustice since the start of colonisation, to be assembled by Yoorrook (Letters Patent, para 2(a)), <u>provided that</u> any information identifying the contributing individual, group, family and/or community (as relevant) is omitted.
No Confidentiality	<p>The information is available to the Yoorrook team and can be openly published and/or referenced by Yoorrook, including in a manner which attributes it to the contributing individual and/or community.</p>

The Yoorrook Chair (on the advice of the Yoorrook team and having regard to any recommendations of the FPDGC) may determine that one of these three categories be applied to information attributed to Other Attribution. The above positions will be recorded alongside the information, in accordance with an Order under s 26(2) of the *Inquiries Act 2014* (Vic) (Inquiries Act).

Future access and use by third parties

All Yoorrook materials, including information contributed by First Peoples, will be archived. Individuals and groups to which information is attributed will be invited to nominate one of four positions regarding **future access** and **use** of archived information by third parties:

Not accessible**	No third party access or use to be permitted.
Limited access**	Accessible and usable only to nominated Groups and/or individuals, e.g.: <ul style="list-style-type: none">- Nominated First Peoples' groups, families or communities;- Named others
Restricted Access**	Access for information purposes but not permitted for any government, media, education or research purpose
Fully Accessible	The evidence is openly available to First Peoples and non-First Peoples.

The Yoorrook Chair (having regard to any recommendations of the FPDGC) may determine that one of these four categories be applied to information attributed to Other Attribution.

The above preferences will be recorded alongside the information, in accordance with an Order under s 26(2) of the Inquiries Act.

****Notes:**

1. Yoorrook has adopted a general Indigenous Data Sovereignty principle of **data caution**. This means that if an individual (or group, family or community (as relevant)) does not make a determination, or their preferences cannot be confirmed, then the default status is "full confidentiality" and "not accessible".
2. Pursuant to s 124 of the Inquiries Act, at the conclusion of a Royal Commission such as Yoorrook, the standard process is for the Commission's records are transferred to the Victorian Government, namely:
 - (unless the Premier determines they are to be transferred to another public office) the Department of Premier and Cabinet (DPC) initially; and
 - subsequently. The Public Records Office of Victoria (PROV) for archiving.

So as to enable the full implementation of Indigenous Data Sovereignty Principles detailed in this Handout and address First Peoples' concerns as raised in consultations with Yoorrook to date, Yoorrook has requested that the Victorian Government pursue legislative reform, so as to:

- a. Enable Yoorrook to nominate a First Peoples' controlled body (or bodies) to have custody and control of its records following the end of its mandate (including through a temporary custodian pending the creation of the permanent body); and
- b. Provide a lifelong exemption from Freedom of Information Act 1982 (Vic) (FOI Act) in the case of Yoorrook's records¹.

Importantly: unless and until this legislative reform is introduced & takes effect, any identified "No access" "Limited access" and "Accessible" preferences may not be capable of being implemented.

¹ Whilst Yoorrook's records, where labelled in accordance with an Order pursuant to s 26(2) of the Inquiries Act, might already be regarded as exempt from applications for access under the FOI Act following any transfer to DPC, PROV and/or other relevant public body, to put the matter beyond doubt, Yoorrook has requested that the Victorian Government introduce amendments to the Inquiries Act as noted above.

6. IDENTIFICATION OF SENSITIVE INFORMATION

At the time of collection (or, prior to any use and/or publication), Yoorrook will seek to identify any sensitive information (such as sensitive cultural, legal and personal information), including by:

- Asking a contributing individual, group or other agency/organisation to identify sensitive information;
- Consulting with contributing individuals, groups or other agencies/organisations;
- Considering the status of the material (e.g. the extent to which already in the public domain); and
- (As necessary) seeking advice from Yoorrook's advisory bodies (discussed in section 9 below).

If any sensitive information is identified through these processes, Yoorrook will:

- mark the information accordingly, in accordance with an Order under s 26(2) of the Inquiries Act; and
- not use or publish this information without:
 - relevant consents (in relation to information attributed to Individual or Group); or
 - a determination of the Yoorrook Chair (having regard to any recommendations of the FPDGC) in relation to information attributed to Other Attribution.

7. HANDLING AND STORAGE WITHIN YOORROOK

Recording material consistently with individuals' instructions

Yoorrook will record First Peoples' consents and preferences as to attribution, use, publication and access to their information. Yoorrook will also use a system of electronic tags known as Traditional Knowledge (TK) Labels to ensure that information identified by an individual (or group, family or community (as the case may be) as culturally significant or containing Traditional Knowledge is known and respected.

Secure handling and storage by Yoorrook

Yoorrook will take steps to handle First Peoples' information in a sensitive and secure manner, including through:

- Carefully recording First Peoples' consents and preferences as to attribution, use, publication, access and applying TK Labels through the steps outlined in sections 5 – 7 above;
- Storing the information which it collates on secure databases, accessible to the Yoorrook team only; and
- Requiring that the Yoorrook team with access to sensitive information are both appropriately supervised, and subject to express confidentiality and conflict of interest undertakings.

8. INDIGENOUS DATA GOVERNANCE - ADVISORY BODIES

In addition to drawing upon its significant internal expertise and capabilities on the issue of Indigenous Data Sovereignty, Yoorrook has obtained and will continue to obtain specialist input and guidance on its approach, through the following mechanisms:

1. Yoorrook's Expert Advisory Committee includes an Indigenous Data Sovereignty expert;
2. A FPDGC established by Yoorrook, comprising 6-8 Victorian Traditional Owners members, selected from expressions of interest and reflecting a diverse range of skill sets, backgrounds and geographical spread, whom:
 - a. Will meet 3-4 times per annum and (and paid sitting fees for meeting attendance);
 - b. (Amongst other matters) will make recommendations as to use, publication, recording TK Labels, access and other arrangements re: Other Attribution information, noting that the FPDGC members:
 - will be given identifying descriptors of the type of information that they are making recommendations on only (i.e. they will not have access to the primary documents/ other material itself); and
 - have obligations of confidentiality and avoidance of conflicts of interest
3. A further Indigenous Data Sovereignty and Governance Advisory Group established by Yoorrook, made up of national and international experts.

9. FURTHER INFORMATION

Further information in respect of Yoorrook's Indigenous Data Sovereignty policies and procedures can be obtained by contacting Yoorrook at 1800 YOO RRK (1800 966 775) or enquiries@yoorrook.org.au.

10. HOW TO CITE THIS INFORMATION SHEET

Yoorrook Justice Commission (2022) 'Indigenous Data Sovereignty and Data Governance', Information Sheet (URL)

11. REFERENCES

Kukutai, T. and Taylor, J. (2016) (eds). Indigenous data sovereignty: Toward an agenda. Canberra: ANU Press.

Lovett, R., Lee, V., Kukutai, T. Rainie, S.C. and Walker, J. (2019) "Good Data Practices for Indigenous Data Sovereignty," in A. Daly, K. Devitt, & M. Mann (Eds.), Good Data, Amsterdam: Institute of Network Cultures Inc. ISBN 978-94-92302-27-4

MaiaM nayri Wingara Aboriginal and Torres Strait Islander Data Sovereignty Collective: About Us. <https://www.maiamnayriwingara.org/about-us25e9cabf4a6/1533808545167/Communique%2B-%2BIndigenous%2BData%2BSovereignty%2BSummit.pdf>

Rainie, S.C., Kukutai, T. Walter, M. Figueroa-Rodriguez, O. Walker, J. & Axelsson, P. (2019) "Issues in Open Data: Indigenous Data Sovereignty." In T. Davies, S. Walker, M. Rubenstein & F. Perini (Eds) The State of Open Data: Histories and Horizons (pp. 300-319). Cape Town and Ottawa: African Minds and International Development Research Centre.

Snipp, C.M. (2016). "What Does Data Sovereignty Imply: What Does it Look Like?" In T. Kukutai & J. Taylor (Eds) Indigenous Data Sovereignty: Toward an Agenda (pp. 39-55). Canberra: ANU Press.

Walter, M., Kukutai, T. Carroll, S. and Lonebear-Rodriguez, D. (Eds) (2020) Indigenous Data Sovereignty and Policy. Routledge: London.

On Indigenous Data Sovereignty, in Australia and globally:

- MaiaM nayri Wingara Indigenous Data Sovereignty Collective <https://maimnayriwingara.org>
- Global Indigenous Data Alliance (GIDA) <https://GIDA-global.org>

On the use and attribution of TK Labels:

- <https://localcontexts.org/>