

11 May 2021

Mr Peter Vaughan
Environmental Media Foundation
Via email

Dear Mr Vaughan

Fingerboards Mineral Sands Mine EES Inquiry: Rules of Evidence

Thank you for your inquiry about laws relating to the standards of evidence that the Inquiry and Advisory Committee (IAC) is operating under.

As advised verbally last week the IAC is not a court or tribunal and is thus not bound by statutory rules of evidence that may apply to those bodies. The IAC has been appointed as an Advisory Committee under the *Planning and Environment Act 1987* (P&E Act) and an Inquiry under the *Environment Effects Act 1978* (EE Act).

The P&E Act explicitly provides that an Advisory Committee is not bound by the rules of evidence in s161(1)(d), which reads in part:¹

is not bound by the rules or practice as to evidence...

In its role as an Advisory Committee, the IAC is however required to accord natural justice to participants, amongst other things.

The EE Act is silent on specific procedural arrangements but long-standing practice in EES Inquiries is consistent with the above arrangements in that Inquiries are not bound by the statutory rules of evidence and they are not meant to be like a court. They are meant to be *exploratory and constructive* as outlined in the Terms of Reference at clause 29(b) and operate with a lesser degree of formality than a court.

That being said, the IAC expects that expert witnesses are aware they have a paramount duty to the IAC (rather than to their client) and will answer questions on that basis. These expectations are set down in the guidance for experts which can be found here:

[Guide to the Expert Evidence \(planning.vic.gov.au\)](http://planning.vic.gov.au).

¹ These provisions relate to Panels under the P&E Act but are extended to Advisory Committees under s152.

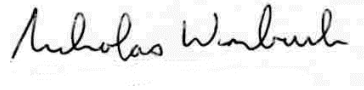
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Each expert providing an Expert Witness Statement must also declare that they have made all the inquiries that they believe are desirable and appropriate and that no matters of significance have to their knowledge been withheld from the IAC.

If you have any queries, please contact Amy Selvaraj at Planning Panels Victoria on fingerboards.iac@delwp.vic.gov.au.

Yours sincerely

A handwritten signature in black ink that reads "Nicholas Wimbush". The signature is written in a cursive style and is positioned above the printed name.

Nick Wimbush

IAC Chair

Peter Vaughan
Environmental Media Foundation Inc.

4 MAY 2021

LETTER SUBMISSION TO IAC PANEL HEARINGS. FINGERBOARDS INQUIRY.

ATTENTION Panel Chairman. Mr Nick Wimbush.

Dear Mr Wimbush.

This is a request for the Chair of the IAC panel to outline and define under which laws or standards of evidence, the Fingerboards IAC panel hearings are being conducted.

I note that this information was not included at the commencement of the first days hearing.

In a criminal court environment, evidence is covered under oath, the Victoria law of evidence, and various prescriptions within relevant Acts, all these impose a standard of truth during the collection of evidence, including criminal penalties from breaching those standards.

However Victoria's EES Act does not contain any prohibition against the intentional supply of misleading information during that process. And presumably that includes during an IAC panel inquiry.

Perhaps an IAC inquiry is governed by the Victoria Evidence Act, if that is the case then it should be stated at the commencement of the hearings. I can find no reference in the Victoria Environmental Effect Act or the Ministerial Guidelines that refer to rules pertaining to evidence presented to an IAC inquiry.

Clearly failing to define the standards by which evidence is provided lowers the credibility of the IAC panel process. If there are no standards of evidence, as it appears, then the Chairman should make that statement at the beginning of the process.

Thank you. Regards.

Peter Vaughan
EMF Inc.

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**THIS DOCUMENTS REPRESENTS A FORMAL SUBMISSION TO THE IAC
FINGERBOARDS INQUIRY PANEL.**

ATTENTION MR NICK WIMBUSH.

Dear Mr Wimbush.

On 4 May, day 2 of the hearing, I sent a letter to you, as the IAC Panel Chair, requesting you detail, the "*Rules of Evidence*", under which this inquiry is being conducted. You made note of my request over zoom, before continuing with the day's hearing. You said an answer would be produced in a, "few days", and made comment evidence may be under the Planning Act, but did not appear to be sure.

It is now day 6 of the hearings and no answer has been produced.

Defining the rules under which a government ordained process is to be conducted, should occur early in a process, and should be available to the public for viewing before a process begins. As it stands the public have no idea under what rules evidence is being given, and thus how it should be judged or weighted.

This failure to define may erode confidence in the IAC panel hearing process. As it stands, without a response from the Panel Chair, it appears there are no rules of evidence in operation. That was something Kalbar's, Mr Morris seemed to have confirmed in comments made in the hearings last week.

I request that you expedite an answer to the issues that I raised by formal letter on 4 May 2021.

Regards.

Peter Vaughan
EMF Inc.