



PRACTICE DIRECTION NO 1¹

GENERAL GUIDELINES – PUBLIC HEARINGS

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INTRODUCTION

1. This Practice Direction sets out procedural guidelines relating to the public hearings to be conducted by the Royal Commission into Management of Informants (**Royal Commission**).
2. This Practice Direction is issued under, and should be read in conjunction with, the *Inquiries Act 2014* (Vic) (**Act**) and the terms of reference contained in the letters patent establishing the Royal Commission dated 13 December 2018.
3. This Practice Direction and any other practice directions published by the Royal Commission may be varied, changed or replaced from time to time. The Royal Commission may, at any time, depart from this Practice Direction if it considers it appropriate to do so.

DATES OF PUBLIC HEARINGS

4. The Royal Commission proposes to conduct public hearings.
5. The usual hearing hours will be from 10:00 am to 1:00 pm and 2:00 pm to 4:00 pm, unless the Royal Commission determines otherwise.
6. Subject to contrary direction of the Royal Commission, the hearings will be open to the public.

PRODUCTION OF DOCUMENTS

7. The following relates to the production of documents to the Royal Commission in response to a notice to produce.
8. Documents are to be produced electronically, unless a notice to produce specifies that hard copy documents are required. Further information about the production and management of documents produced to the Royal Commission can be found in the Document Management Protocol.

WITNESSES

Witnesses generally

9. Subject to the control of the chair of the Royal Commission (or presiding Commissioner), Counsel Assisting the Royal Commission (Counsel Assisting) will:

¹ Issued under section 16(1) of the *Inquiries Act 2014* (Vic).

- (a) identify, contact and call each individual whom they wish to give evidence as a witness before the Royal Commission;
 - (b) determine whether an individual, in respect of whom a witness statement has been prepared or received, will be called to give evidence at a hearing;
 - (c) determine the order in which witnesses are to give evidence; and
 - (d) determine which documents are tendered during public hearings.
10. The Royal Commission may:
- (a) receive the evidence of a witness orally or by written statement or both;
 - (b) request persons to give evidence, or may serve persons required to give evidence with a notice to attend to give evidence; and/or
 - (c) require a witness to give evidence concurrently with other witnesses.
11. Witnesses must give evidence on oath or affirmation unless the Royal Commission directs otherwise.
12. Where a witness has been required to give evidence in the form of a written statement, and is subsequently called to appear in person, the witness will present and adopt the witness statement as their evidence-in-chief, and vary or supplement it if necessary.
13. Subject to any contrary determination of the Royal Commission, it is expected that where an individual is required to give evidence in the form of a written statement:
- (a) Counsel Assisting will provide the format or rubric of the proposed witness statement, and the witness statement must follow, and address each topic and issue included in that format; and
 - (b) their witness statement will be prepared with the assistance of their legal representative (if they are so represented).
14. Where an individual is not legally represented, Counsel Assisting and the Solicitor Assisting the Royal Commission (Solicitor Assisting) will assist the individual to prepare their witness statement. Refer to paragraphs 19 and 20 in relation to legal representation.
15. Individuals required to give evidence will be provided with a notice to attend and appropriate notice of the time that the Royal Commission will call upon the notice to attend and give evidence. Individuals unavailable to attend on a particular date should give notice of the cause of the unavailability and the closest dates when they are available to the Solicitor Assisting at the earliest opportunity.
16. Persons served with a notice to attend are not required to seek leave to appear (refer to paragraphs 33 to 46 below).
17. Individuals required to give evidence will, in due course, be served with a notice to produce for the production of their witness statement.
18. Assistance to witnesses will be provided in accordance with section 42 of the Act and Part 2 of the Inquiries Regulations 2015. Requests for assistance must be made in writing to the Solicitor Assisting and satisfactory documentary evidence must be provided at the time of application.

To represent a witness giving evidence

19. Witnesses appearing before the Royal Commission may be legally represented with the authorisation of the Royal Commission.
20. Where a legal practitioner seeks authorisation to appear before the Royal Commission for the limited purpose of representing a witness while that witness is giving evidence at a public hearing of the Royal Commission:
 - (a) the legal practitioner is to inform the Royal Commission in writing at least seven days prior to the witness appearing before the Royal Commission;
 - (b) the legal practitioner must indicate whether he or she (and in the case of Counsel, his or her instructing solicitors) act for any other person in relation to the Royal Commission and the matters it is inquiring into, and if so, why it is appropriate for the practitioner to be authorised to appear (any such submission should be brief and no longer than one to two A4 pages, 12 point font); and
 - (c) unless the Royal Commission determines otherwise, the legal practitioner will be authorised to appear before the Royal Commission for the limited purpose of representing the witness while the witness is giving evidence.

Examination and cross-examination of witnesses

21. Subject to any contrary determination of the Royal Commission, the procedure for examination and cross-examination is as follows, which is subject to change where the circumstances require:
 - (a) where the witness is legally represented, the legal representative leads the witness's evidence-in-chief by adopting the statement with supplements or variations on oath or affirmation before it is tendered;
 - (b) Counsel Assisting may then ask questions of the witness after evidence-in-chief has been led;
 - (c) other persons with leave to appear may then, with leave, cross-examine the witness (see below);
 - (d) the legal representative for the witness may then re-examine the witness; and
 - (e) finally, Counsel Assisting may then re-examine the witness.
22. A person or organisation seeking leave to cross-examine a witness must first seek and be granted leave to appear (refer to paragraphs 33 to 46 below regarding leave to appear).
23. In determining whether a person has a sufficient interest to cross-examine a witness, the Royal Commission may call upon the cross-examiner to:
 - (a) identify the purpose of the cross-examination;
 - (b) set out the issues to be canvassed; and/or
 - (c) provide copies of any documents to which they propose to take the witness.
24. Any such leave being granted will be subject to any limitations imposed by the Chair or presiding Commissioner.
25. No general, open-ended right of cross-examination will be given.

26. Unless the Royal Commission determines otherwise, the procedure for cross-examination will generally be as follows, subject to change where the circumstances require:
- (a) repetitive questioning or duplication will not be permitted. Where persons represented before the Royal Commission have a common or similar interest in relation to the evidence of a particular witness:
 - (i) their representatives should consult with each other and with Counsel Assisting before the witness is called;
 - (ii) agreement should be reached between all relevant persons about the order and general areas or subjects of cross-examination;
 - (iii) if no agreement is reached, the Royal Commission will direct the order; and
 - (iv) re-visiting general areas or subjects covered by earlier cross-examination by persons with a common or similar interest will not be permitted.
 - (b) cross-examination will be limited to the matters in issue. The topics and extent of cross-examination may be limited by the Royal Commission.
 - (c) a copy of any document proposed to be put to a witness must be provided to Counsel Assisting as soon as possible after a decision is made to use the document and in all cases prior to the date of the hearing at which it is intended to be used.
 - (d) ordinarily, cross-examination that raises collateral matters going only to credit will not be permitted.
 - (e) ordinarily, cross-examination will be permitted only to the extent that the Royal Commission considers it will assist in the task of investigating and reporting on the subject matter of the terms of reference.
27. Applications to cross-examine witnesses:
- (a) should be made in writing and accompanied by a short written submission (no longer than one to two pages A4 pages, 12 point font) setting out the basis on which the application is made, having regard to the factors set out in paragraph 38 below. The submission should be lodged with the Royal Commission by emailing it to: contact@rcmpi.vic.gov.au

by the date which is seven days prior to the relevant hearing date (the Royal Commission may extend or abridge this time as is deemed necessary or practicable); and
 - (b) will either be determined on the papers in advance of each hearing and the outcome of the application communicated to the applicant, or the applicant or the applicant's legal representative will be notified that they will be required to appear before the Royal Commission on a specified date for further consideration of the application.

Tendering documents other than witness statements

28. Counsel Assisting will determine which and when documents are tendered.
29. Before the commencement of a public hearing, each person granted leave to appear at that hearing may be given confidential access to documents that are likely to be tendered as exhibits at the public hearing.

30. Additional documents may be tendered by Counsel Assisting during the course of a public hearing. If a person has a special interest in the issues to which an additional tendered document relates as soon as is practicable, the person will be provided with a copy of the document insofar as it is relevant to the issues that may give rise to that significant interest, unless the Royal Commission determines otherwise in the public interest.
31. If a person seeks to have a document placed before a public hearing, the process is that:
 - (a) they must notify the Solicitor Assisting that they wish to have the document placed before the public hearing by providing a copy of the document to the Solicitor Assisting within a reasonable time before the public hearing;
 - (b) the Royal Commission may require the production of other documents; and
 - (c) Counsel Assisting will decide whether or not the documents are to be tendered.
32. An application to tender a document may only be made directly to the Royal Commission if this process has been completed and Counsel Assisting has refused to tender a document.

LEAVE TO APPEAR AT THE PUBLIC HEARINGS

33. Applications for leave to appear are not necessary to make written submissions to the Royal Commission.
34. Persons who are witnesses at the public hearings are not required to seek leave to appear.
35. Applications for leave to appear are only required where a person or organisation seeks to appear, other than as a witness, at the public hearings.
36. Leave to appear before the Royal Commission may, at any time, be varied or withdrawn by the Royal Commission, or made subject to altered or additional limitations or conditions.
37. The Royal Commission's general principles pertaining to and process for applications for leave to appear and the extent to which a person may be legally represented in an inquiry are as follows:
 - (a) hearings enable the Royal Commission to inquire into, and receive evidence concerning, a particular topic falling within the terms of reference.
 - (b) as the Royal Commission determines its program of public hearings, these will be published on its website. Details of upcoming public hearings will include the scope of those public hearings.
 - (c) at the time that the scope of a hearing is published, the Royal Commission will invite written applications for leave to appear from persons who believe that they have a direct or special interest in the subject matter of the inquiry within the scope of a particular public hearing.
38. The Royal Commission will consider the following factors when determining an application for leave to appear or to be legally represented:
 - (a) whether the person has been served with a written notice to produce a document or thing to the Royal Commission;

- (b) whether the person has a direct or special interest in the subject matter of the inquiry;
 - (c) the likelihood that the Royal Commission may make an adverse finding against the person;
 - (d) the ability of the person to assist the Royal Commission in the inquiry;
 - (e) the age of the person;
 - (f) if the person is seeking to be legally represented, why they should be legally represented; and
 - (g) such other matters as the Royal Commission considers relevant.
39. Applications for leave to appear made by persons referred to in paragraph 38:
- (a) should be made on the form 'Application for Leave to Appear at the Royal Commission'. This form should be accompanied by a short written submission (no longer than one to two A4 pages, 12 point font) setting out the basis on which the application is made, having regard to the factors set out in paragraph 38. The form and the submission should be lodged with the Royal Commission by emailing it to contact@rcmpi.vic.gov.au by the date which is seven days prior to the relevant hearing date (the Royal Commission may extend or abridge this time as is deemed necessary or practicable); and
 - (b) will either be determined on the papers in advance of each hearing and the outcome of the application communicated to the applicant, or the Royal Commission may notify the applicant or the applicant's legal representative that they will be required to appear before the Royal Commission on a specified date for further consideration of the application.
40. Ordinarily the Royal Commission will not grant unconditional leave to appear. Most grants of leave will be confined to the hearing of the particular inquiry in which the person has a direct or special interest. Conditions may also be imposed, such as limiting the particular topics or issues upon which the person may examine or cross-examine a witness.
41. Where a person is granted leave to appear:
- (a) the Royal Commission will inform the person of that fact in writing;
 - (b) the person to whom leave to appear is granted, or their legal representative, is entitled to participate in the public hearing concerning the particular inquiry, to the extent and in the manner determined by the Royal Commission;
 - (c) the person, or the person's legal representative, may make:
 - (i) a further application to have evidence tendered or heard;
 - (ii) a further application for leave to cross-examine a witness; and
 - (iii) submissions about the findings available to the Royal Commission following the relevant hearing; and
 - (d) the Royal Commission may determine the nature and extent of any other conditions attaching to any grant of leave taking into account all relevant considerations,

including the individual circumstances of the applicant and the contents of the applicant's application for leave.

42. No general, open-ended right of examination, cross-examination or tender of evidence will be given to any person.
43. Any further application must be submitted by 4pm seven days prior to the relevant hearing date. The Royal Commission may extend or abridge this time as is deemed necessary or practicable.
44. Persons who have been granted leave to appear and who wish to raise a procedural or legal matter, or wish to make a submission about the determination of their application for leave, should write to the Solicitor Assisting, identifying the issue and providing a brief outline of the submission to be made.
45. Persons who have been granted leave to appear before the Royal Commission may be legally represented at a hearing without the further need for that legal representative to obtain separate authorisation.
46. Persons may seek leave to appear at any time if something that has occurred during a public hearing leads them to believe that they may have a direct or special interest in the subject of inquiry.

COMPLIANCE WITH NOTICE TO PRODUCE AND/OR NOTICE TO ATTEND

47. A person's obligations in response to notices to produce and/or notices to attend are governed by the Act and nothing in this Practice Direction modifies those obligations.
48. A person served with a notice to produce or a notice to attend may make a claim to the Royal Commission that the person has or will have a reasonable excuse for failing to comply with the notice.
49. Claims made in respect of paragraph 48 should be made in writing to the Solicitor Assisting and be accompanied by a short written submission (no longer than one to two A4 pages, 12 point font) setting out the basis upon which each claim is made, having regard to section 18 of the Act.²
50. The time for making the above claims is:
 - (a) in relation to a notice to produce on or before the production date specified in the notice; and
 - (b) in relation to a notice to attend by 4.00 pm two business days prior to the attendance date.
51. If the Royal Commission is satisfied that the claim is made out, it may vary or revoke the notice and advise the claimant in writing.
52. Unless the claimant is advised by the Royal Commission that that their claim is made out, compliance with the notice is required.

² A person making a claim pursuant to section 18 of the Act should also have regard to sections 32 (legal professional privilege), 33 (privilege against self-incrimination) and 34 (statutory secrecy and confidentiality provisions) of the Act.

RESTRICTED PUBLICATION ORDERS PRIOR TO PUBLIC HEARINGS

53. The Royal Commission may restrict publication of information relating to the public hearings in accordance with section 26 of the Act, whilst sets out relevant considerations.
54. Claims made in respect of paragraph 53 should be made in writing to the Solicitor Assisting at the time of production and be accompanied by a short written submission (no longer than one to two A4, 12 point font) setting out the basis upon which each claim is made, having regard to section 26 of the Act.
55. If the Royal Commission is satisfied that the claim is made out, the Royal Commission may make an order prohibiting or restricting the publication of information or evidence.

ACCESS TO AND PUBLICATION OF EVIDENCE

56. Subject to any other direction of the Royal Commission (for example, as to the redaction of transcripts or witness statements), the following procedures apply to evidence given at the public hearings:
 - (a) transcripts of evidence at the public hearings will be uploaded onto the Royal Commission's website as soon as they are available;
 - (b) statements of witnesses called to give evidence at the public hearings will be available on the Royal Commission's website as soon as practicable after the witness has given evidence; and
 - (c) documents received into evidence at the public hearings will be available on the Royal Commission's website as soon as practicable after the document has been tendered.
57. This section of the Practice Direction should be read in conjunction with the Document Management Protocol.

CONTACTING THE ROYAL COMMISSION

58. Any person wishing to contact the Royal Commission about any matter dealt with in this Practice Direction or any other matter concerning the public hearings should email contact@rcmpi.vic.gov.au.