



## **Coronavirus (COVID-19)**

The Commission is carefully monitoring the Commonwealth, State and Territory Governments' announcements and health advice relating to coronavirus (COVID-19) to ensure that arrangements are in place for the Commission and parties participating in the Commission's work to mitigate any adverse impacts on people and operations.

The below guidelines will be reviewed regularly to ensure that they are consistent with any changes that may be recommended by Commonwealth, State and Territory agencies in relation to COVID-19. If any party or person has any concerns in relation to the operation of a practice guideline and the impact of COVID-19 please contact Solicitors Assisting at [RCNDA.Notices@royalcommission.gov.au](mailto:RCNDA.Notices@royalcommission.gov.au) or 1800 909 826.

### **PRACTICE GUIDELINE 2**

#### **LEAVE TO APPEAR AND WITNESSES**

*Updated 12 June 2020*

#### **PART A**

##### **Introductory matters**

1. This Practice Guideline relates to the conduct of the Royal Commission into National Natural Disaster Arrangements (**Commission**). It should be read in conjunction with the *Royal Commissions Act 1902* (Cth) (**Act**), the terms of reference contained in the Letters Patent establishing the Commission dated 20 February 2020 and other Practice Guidelines.
2. This Practice Guideline sets out general guidance about applications for leave to appear and witnesses before the Commission.
3. This Practice Guideline may be varied or replaced at any time.

#### **PART B**

##### **When leave to appear may be granted**

4. Leave to appear may be granted when an applicant has a direct and substantial interest in the hearing, part of the hearing or the subject of inquiry, and will generally be granted when an applicant:
  - a. has been summonsed to give evidence;
  - b. is the subject of an inquiry to be undertaken; or

- c. is likely to be the subject of an adverse allegation.
- 5. Leave to appear before the Commission may be granted subject to such conditions or limitations as the Commission determines.
- 6. Leave to appear before the Commission may, at any time, be varied or withdrawn by the Commissioners, or made subject to altered or additional limitations or conditions.

## **PART C**

### **Process for applications**

- 7. Hearings enable the Commission to inquire into, and receive evidence concerning, a particular topic falling within the terms of reference.
- 8. As the 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.
- 9. The Commission's general process for applications for leave to appear is that at the time that the scope of a hearing is published, the Commission invites written applications for leave to appear from people<sup>1</sup> who believe that they have a direct and substantial interest in the scope of a particular public hearing.
- 10. Applications for leave to appear made by people referred to in paragraph 8 above:
  - a. should be made on the form 'Application for Leave to Appear at a Hearing of the Commission', which is available on the Commission's website. This form should be accompanied by a short submission setting out the basis on which it is said the applicant has a direct and substantial interest. The form and the submission should be lodged with the Commission by emailing it to [RCNDA.Notices@royalcommission.gov.au](mailto:RCNDA.Notices@royalcommission.gov.au) by the date required; and
  - b. will be determined on the papers in advance of each hearing and the outcome of the application will be communicated to the applicant, or the Commissioners will notify the applicant or the applicant's legal representative that they will be required to appear before the Commission on a specified date for further consideration of the application.
- 11. It will be unlikely that the Commission will grant any person unconditional leave to appear. It is anticipated that most grants of leave to appear will be confined to the hearing of the particular inquiry in which the person has a direct and substantial interest and subject to conditions, including that the time allowed to give evidence or make any submissions may be limited.

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<sup>1</sup> A reference to a 'person' or 'people' in this Practice Guideline includes a body politic or body corporate as well as an individual.

12. Where a person is granted leave to appear:
  - a. the person to whom leave to appear is granted is entitled to participate in the public hearing concerning the particular inquiry, subject to Practice Guideline 4, the Commissioners' control and to such extent as the Commissioners consider appropriate;
  - b. the person, or the person's legal representative, may:
    - i. subject to paragraphs 28 and 29 below, apply to have evidence tendered or heard;
    - ii. apply in writing for leave to examine/cross-examine a witness; and
    - iii. make submissions about the findings available to the Commission following the relevant hearing; and
  - c. the Commissioners may determine the nature and extent of any other conditions attaching to any grant of leave taking into account relevant considerations, including the individual circumstances of the applicant and the contents of the applicant's application for leave.
13. People 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 communicate with the Solicitors Assisting the Commission in writing, identifying the issue and providing a brief outline of the submission to be made, unless the matter is urgent or it is otherwise not possible provide advance notice in writing. Practice Guideline 4 (Virtual Public Hearings) contains further guidance in relation to communications with the Commission during hearings.
14. People who have been granted leave to appear before the Commission may be represented by a legal representative at a hearing without the further need for that legal representative to obtain separate authorisation pursuant to s 6FA of the Act.
15. People 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 and substantial interest in the subject of inquiry. Leave should be applied for as set out at paragraph 10 above.

## **Witnesses**

### *Witnesses generally*

16. Counsel Assisting and Solicitors Assisting the Commission will:
  - a. identify, contact and call each individual whom they wish to give evidence as a witness before the Commission;
  - b. determine the order in which witnesses are to give evidence; and
  - c. determine which documents are tendered during public hearings.

17. As a general rule, it is expected that the Commissioners will receive the evidence-in-chief of each witness called in the form of a written statement or through the tender of a witness' response to a Notice to Give Information (**NTG**). When called to give evidence, the witness will be asked to adopt their witness statement or NTG response as their evidence-in-chief. This may be supplemented by additional evidence-in-chief only by leave of the Commissioners upon proper cause. The Commission may also invite a witness to give a short summary of their evidence-in-chief.
18. In some circumstances if evidence is being given by way of a panel forum, a formal statement will not be required but notice will be provided as to what is required to be addressed at the panel forum.
19. Individuals required to give evidence at a hearing may be provided with a 'Summons to Attend and Give Evidence' and appropriate notice of the time that the Commission will call upon the Summons. Individuals unavailable to attend on a particular date should give notice of the date and the cause of the unavailability to the Solicitors Assisting the Commission at the earliest opportunity and, if possible, propose an alternative date within the relevant hearing period.
20. Individuals required to give evidence will, if necessary, be served with a notice for the production of their witness statement.
21. Unless otherwise ordered by the Commission, all witnesses summonsed to give evidence will appear by video or videolink in accordance with Practice Guideline 4.

#### *Examination*

22. Examination or cross-examination of witnesses by persons other than Counsel Assisting will be governed by Practice Guideline 4.
23. The procedure for examination of witnesses is as follows, which is subject to change only upon a grant of leave by the Commissioners where they consider the circumstances require:
  - a. the witness will be invited to take an oath or affirmation;
  - b. Counsel Assisting will lead the witness' evidence, typically by adoption by the witness of their statement or NTG response before it is tendered;
  - c. Counsel Assisting may then ask further questions of the witness (including, exploring issues identified by parties with leave to appear on notice in accordance with paragraph 13 of Practice Guideline 4);
  - d. the legal representative (if any) for the witness may then, with leave, examine the witness; and
  - e. Counsel Assisting may then ask any additional questions arising from the witness' earlier evidence.

#### *Tendering documents other than witness statements*

24. Counsel Assisting the Commission will determine which and when documents are to be tendered.
25. Before the commencement of a public hearing, each person granted leave to appear at that hearing may, in the discretion of Counsel Assisting or the Solicitors Assisting the Commission, be given confidential access to documents that are likely to be tendered as exhibits at the public hearing and which could affect the person's interests.
26. One purpose of providing this access is to enable a person to identify whether any application should be made for a non-publication direction in relation to a document or any part of a document.
27. Additional documents may be tendered by Counsel Assisting the Commission during the course of a public hearing. If a person has a significant interest in the issues to which an additional document being tendered relates, the Commission will provide the person with a copy of the additional document relevant to the issues that may give rise to that significant interest and provide an opportunity to identify whether any application should be made for a non-publication direction.
28. If a person seeks to have a document placed before a public hearing, the process is that:
  - a. they must notify the Solicitors Assisting that they wish to have the document placed before the public hearing by providing a copy of the document to the Solicitors Assisting the Commission within a reasonable time before the public hearing, which must be not less than 7 days save for in exceptional circumstances;
  - b. the Commissioners may require the production of other additional documents; and
  - c. Counsel Assisting the Commission will decide whether or not the documents and/or any additional documents are to be tendered.
29. An application to tender a document may only be made directly to the Commissioners if this process has been completed and Counsel Assisting the Commission has refused to tender a document. Any such application must be made in writing, addressed to Solicitors Assisting.