



PRACTICE DIRECTION NO. 1 - PUBLIC HEARINGS

RELEASED 24 MAY 2019

INTRODUCTION

1. The Royal Commission into Victoria's Mental Health System (**the Royal Commission**) will gather information from many sources, including community consultations, submissions from the public, research, expert round-tables and public hearings.
2. This Practice Direction deals with procedural matters relating to public hearings.
3. This Practice Direction is issued under s.16(1) of the *Inquiries Act 2014 (Vic)* (**the Act**). It may be varied from time to time, and the Royal Commission may depart from it at any time if it considers it appropriate to do so.

FOCUS OF PUBLIC HEARINGS

4. The Royal Commission will publish a list of the topics to be examined in the first round of public hearings, before the commencement of the hearings. It will also, from time to time, publish a list of the witness who will attend and give evidence at the hearings.
5. Subject to any contrary direction of the Royal Commission pursuant to the Act, public hearings will be open to the public.

DATES OF PUBLIC HEARINGS: OPEN TO THE PUBLIC

6. The Royal Commission will conduct public hearings during the period 2 July 2019 to 26 July 2019 and anticipates conducting a further round of public hearings in early 2020.

RULES OF EVIDENCE

7. Subject to the provisions of the Act, the conduct of public hearings will be within the discretion of the Commission, as determined by the Chairperson of the Royal Commission. In accordance with section 14 of the Act, the Royal Commission is not bound by the rules of evidence.

WITNESSES

8. Subject to the control of the Chairperson of the Royal Commission, Counsel Assisting the Royal Commission (**Counsel Assisting**) will determine who is to be called as a witness at the public hearings, the order in which those witnesses are called and examined and which documents are to be

tendered.

9. The Royal Commission may request a person to give evidence or may serve the person required to give evidence a notice to attend to give evidence, but invites witnesses who it identifies, to attend to give evidence voluntarily.
10. The Royal Commission may decide to receive the evidence of a witness orally or by written statement or both. As a general rule, the Commission will receive the evidence of witnesses in the form of a written statement, to be elaborated upon orally when the witness is called to give evidence.
11. The Royal Commission will require witnesses to give evidence on oath or affirmation.
12. The Royal Commission may require witnesses to give evidence concurrently with other witnesses.

PREPARATION OF EVIDENCE

13. Counsel Assisting, with the assistance of the Solicitors Assisting the Royal Commission will:
 - a) identify and contact each individual they wish to give evidence as a witness before the 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.
14. It is expected that where an individual is legally represented:
 - a) the witness statement will be prepared by their legal representatives;
 - b) Counsel Assisting will identify the issues and questions to be addressed in the statement;
 - c) solicitors for the Royal Commission will communicate with the witnesses' representatives about the time by which the statement will be required, and where appropriate, about conferring with the witness prior to the date on which the witness gives evidence.
15. Where an individual is not legally represented, counsel and solicitors assisting the Commission will prepare that person's witness statement and will communicate with the witness to make arrangements for doing so.

EXAMINATION OF WITNESSES

16. All witnesses called to give evidence will be examined by Counsel Assisting.
17. Where practicable, Counsel Assisting will make reasonable endeavours to notify witnesses in advance of the hearing of any topics on which questions will be asked of the witness that are not covered by the witness' statement. Counsel Assisting may, however, ask questions of the witness irrespective of whether notice is given.

18. The legal representative of a witness who is called to give evidence, or a person or organisation who has been granted leave to appear (including by their legal representative) (see below) may seek leave to examine or cross-examine a witness.
19. Examination and cross-examination of witnesses will be by leave only. No general, open-ended right of examination, cross-examination or tender of evidence will be given to any person.
20. In determining whether a person has a sufficient interest to examine or cross-examine a witness, the Royal Commission may call upon the party making the application to:
 - a) identify the purpose of the cross-examination;
 - b) set out the issues to be canvassed;
 - c) specify the proposed duration of the examination;
 - d) provide copies of any documents to which they propose to take the witness.
21. Repetitive questioning or duplication will not be permitted.
22. Questioning will be limited to matters in issue and may otherwise be restricted by the Chairperson in accordance with the Act. The Chairperson may limit the particular topics or issues upon which a person can examine.
23. A copy of any document proposed to be put to a witness must be provided to the Solicitors Assisting the Royal Commission within a reasonable time before it is intended to be used.
24. Subject to paragraph 25, any person who has leave to appear and who wishes to seek leave to examine or cross-examine a witness must notify Counsel Assisting at least 2 working days before the witness is scheduled to give evidence, in accordance with the timetable to be published by the Royal Commission from time to time, and inform Counsel Assisting of the matters set out in paragraph 20.
25. If a person who has leave to appear wishes to seek leave to examine or cross examine a witness and has not given notice as required by paragraph 24, that person may nevertheless seek leave, and may be called upon to specify, in addition to the matters set out in paragraph 20, why notice was unable to be given in advance.
26. If the legal representative of a person who is to be called as a witness wishes to re-examine that person, the legal representative must, at the conclusion of the witness' evidence, advise Counsel Assisting that they wish to re-examine and indicate the anticipated duration of the re-examination. The Commission may call upon the legal representative to identify the purpose of the re-examination and the issues to be canvassed. Re-examination will be permitted by leave of the Chairperson. There is no automatic right of re-examination.

DOCUMENTS

27. Counsel Assisting will determine which and when documents are tendered.
28. Before the commencement of a public hearing, each person granted leave to appear at the hearing may be given confidential access to documents that are likely to be tendered as exhibits at the public hearings. The time at which such access will be granted is in the discretion of the Royal Commission.
29. Additional documents may be tendered by Counsel Assisting during the course of a public hearing.
30. If a person who has been granted leave to appear seeks to have a document placed before a public hearing the process is that:
 - a) that person must notify the Solicitor Assisting the Royal Commission that they wish to have the document placed before the public hearing by providing a copy of it within a reasonable time before the public hearing;
 - b) the Royal Commissioner may require the production of other documents; and
 - c) Counsel Assisting will decide whether or not the documents are to be tendered.

LEAVE TO APPEAR

31. All persons and organisations who wish to do so may make written submissions to the Royal Commission in accordance with the process outlined elsewhere on the Royal Commission's website. No application for leave to appear is necessary in order to make a written submission.
32. A person or organisation participating in a community consultation, round table discussion or similar process does not need to seek leave to appear for that purpose.
33. Persons who are witnesses at the public hearing are not required to seek leave to appear.
34. Having regard to the various means by which persons and organisations can provide information and assistance to the Royal Commission in its inquiry, and subject to section 15(2) of the Act, leave to appear is unlikely to be granted unless the applicant can demonstrate that their presence during public hearings will provide assistance to the Royal Commission in the exploration and analysis of the evidence of a kind which would otherwise not be available if that person or organisation were not granted leave.

Applications for leave to appear

35. All applications for leave to appear at the public hearings must be made on the form **attached** to this Practice Direction entitled "Application for Leave to Appear at the Public Hearings of the Royal Commission".
36. The completed form must be accompanied by a submission of no more than 300 words addressing

the reasons why the applicant should be granted leave to appear at the public hearings. Submissions should address:

- a) the matters referred to in section 15(2) of the Act; and
- b) how granting leave to appear at the public hearings would assist the Royal Commission in the conduct of the public hearings phase of the Commission's inquiries over and above any written submissions that the applicant may make to the Royal Commission.

37. Any application must be submitted by 4pm on 14 June 2019.
38. Applications for leave should be sent to Melissa Iskov by email to: melissa.iskov@dpc.vic.gov.au or by post to: PO Box 12079, A'Beckett Street, Victoria 8006.
39. The Royal Commission will consider all applications and determine who should be granted leave to appear. It is unlikely that the Royal Commission will grant leave to appear unless the applicant can demonstrate and will be able to provide relevant assistance to the Royal Commission.
40. The Royal Commission may determine applications for leave to appear without any oral hearing and on the basis of the application and submissions provided.
41. The Royal Commission will notify the applicant in writing of its determination.
42. A grant of leave will be leave to appear at the public hearings subject to any terms and conditions specified in the grant and will include leave to be legally represented (if the applicant wishes to be represented).
43. The terms and conditions on which leave to appear is granted may include leave to appear in respect to a particular issue or issues or leave to appear with respect to the evidence of a particular witness or witnesses.
44. The Royal Commission may at any time withdraw leave to appear or make such leave subject to amended or additional terms and conditions.

RESTRICTED PUBLICATION ORDERS

45. The Royal Commission may restrict publication of information relating to the public hearings in accordance with section 26 of the Act.
46. Subject to the previous paragraph and any other direction of the Royal Commission (for example as to the reduction of transcripts or witness statements) the Royal Commission will adopt the following procedures in respect of 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) witness statements of witnesses called to give evidence at the public hearings will be available on the Commission's website as soon as practicable after the witness has given evidence; and
- c) documents referred into evidence at the public hearings will be available on the Commission's website as soon as practicable after the document has been tendered.

CONTACTING THE ROYAL COMMISSION

47. Any questions about any matters dealt with in this Practice Direction or other matters concerning the public hearings should be directed to Alan Mitchell of Herbert Smith Freehills on (03) 9288 1401 or by email: Alan.Mitchell@hsf.com.

Application for Leave to Appear at the Public Hearings of the Royal Commission

Name of person or organisation seeking leave to appear	
Lawyer(s) representing the person or organisation (if any)	
Contact person(s)	
Contact address	(State) (Postcode)
Contact telephone number	(Business) (Mobile)
Contact email address(es)	

Please attach a short submission as to the reasons why the applicant should be granted leave to appear at the public hearings.

The submission must be of no more than 300 words and should address:

- the matters referred to in section 15(2) of the *Inquiries Act 2014 (Vic)*; and
- how granting leave to appear at the public hearings would assist the Royal Commission in the conduct of the public hearings phase of the Commission's inquiries over and above any written submissions that the applicant may make to the Royal Commission

Please lodge this form with the attached submission by sending it via:

- email to: melissa.iskov@dpc.vic.gov.au; or
- post to: PO Box 12079, A'Beckett Street, Victoria 8006.