PRACTICE GUIDELINE 3

WITNESSES

Part A

Introductory matters

1. This Practice Guideline (Guideline) is about the conduct of concurrent Royal Commissions into Violence, Abuse, Neglect and Exploitation of People with Disability established under Letters Patent of the Commonwealth and relevant States\(^1\) (collectively, the Royal Commission). This Guideline should be read together with the Royal Commissions Act 1902 (Cth), the relevant State Acts,\(^2\) the terms of reference contained in the Letters Patent establishing the Royal Commission\(^3\) and all other practice guidelines published by the Royal Commission.

2. This Guideline sets out general guidance about appearing as a witness before the Royal Commission.

3. This Guideline may be varied or replaced at any time as the Royal Commission considers appropriate.

4. If you would like help dealing with the Royal Commission, please:

   a. call us on 1800 517 199\(^4\) (between 9:00am-5:00pm AEDT Monday-Friday except on public holidays); or

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\(^1\) Letters Patent dated: 4 April 2019 (Cth), 17 April 2019 (NSW), 20 May 2019 (Tas), 4 June 2019 (Vic), 20 June 2019 (SA), 27 June 2019 (Qld) and 20 August 2019 (WA).

\(^2\) The relevant State Acts establishing the Royal Commission include the Royal Commissions Act 1923 (NSW), Commissions of Inquiry Act 1950 (Qld), Royal Commissions Act 1917 (SA) Commissions of Inquiry Act 1955 (Tas), Inquiries Act 2014 (Vic) and Royal Commissions Act 1968 (WA).


\(^4\) If you would like to use the National Relay Service to call us, please phone 133 677.
b. email us at DRCenquiries@royalcommission.gov.au; or

c. write to us at GPO Box 1422 Brisbane QLD 4001.

Part B
Witnesses generally

5. Counsel Assisting the Royal Commission (Counsel Assisting) and the Solicitors Assisting the Royal Commission (Solicitors Assisting) will:

a. identify and contact any person\(^5\) whom they would like to give evidence as a witness before the Royal Commission (for example, we may ask a person who has made a submission to give evidence);

b. decide who will be asked to give evidence at a hearing;

c. decide the order in which witnesses will give evidence; and

d. decide which documents will be tendered to the Royal Commission during public hearings.

6. When you give information or a submission to the Royal Commission you can also let the Royal Commission know if you would like to give evidence, should the Royal Commission invite you to do so. If you have told the Royal Commission about your experience of violence, abuse, neglect or exploitation and the Royal Commission asks you to give evidence, you can decide whether or not to do so.

7. If you are given a ‘Summons to Appear before the Commission’, you may be legally represented before the Royal Commission while you are giving evidence, without you or your legal representative needing to ask for leave to appear for this purpose.

8. If you want to be legally represented for other purposes during a hearing (for example, so that your legal representative is allowed to ask questions of other witnesses or make

\(^5\) A reference to a ‘person’, ‘people’ or ‘you’ in this Practice Guideline includes a body politic or body corporate as well as an individual.
submissions), you will need to apply for leave to appear in accordance with Practice Guideline 4 (Conduct of Hearings).

9. If you are asked to give evidence at a hearing, the Royal Commission will support you to give evidence in the way that best suits you. Please tell us about your preferences and any supports that you need.

Part C
Witness statements
10. As a general rule, each witness at a public hearing will give his or her primary evidence (evidence-in-chief) to the Royal Commission in a written witness statement.

11. However, if you are asked to give evidence at a hearing, the Royal Commission will support you to provide your statement in the way that best suits you. Please tell us if you need support to provide your statement. For example, you should tell us:

a. if you would prefer to make your statement by video or audio;

b. if you would like to have a braille copy of your statement printed and made available to you at the hearing;

c. if you would prefer to make your statement with the help of an interpreter or someone else who may communicate on your behalf or help you with communication;

d. if you need aids or equipment to help you make your statement;

e. if you would prefer to make your statement accompanied by a relative, friend or other support person.

Witness statements — if you are legally represented
12. Generally, if you have been asked to appear as a witness and you are legally represented:

a. the Solicitors Assisting will provide you with an outline of the topics that you should deal with in your witness statement; and
b. your witness statement must follow the outline, and discuss each topic included in the outline.

13. However, if you have any difficulties following the outline or discussing those topics, please ask your legal representative to contact the Royal Commission. We will support you to provide your statement in the way that best suits you.

14. If you include information in your witness statement that was not covered in the outline provided by the Solicitors Assisting, that information may be excluded from your primary evidence (evidence-in-chief). Again, please ask your legal representative to contact the Royal Commission if you have any concerns about the outline provided by the Solicitors Assisting.

*Witness statements – if you are not legally represented*

15. If you have been asked to appear as a witness and you are not legally represented, Counsel Assisting and the Solicitors Assisting will help you to prepare your statement. The Solicitors Assisting will contact you about preparing your statement.

*Providing your witness statement to the Royal Commission*

16. You should provide your witness statement (in written or other form) by the time and date requested by the Royal Commission, unless you have agreed with the Solicitors Assisting on a different date. If you are unable to meet the specified time and date, please contact us by email to DRCsolicitor@royalcommission.gov.au, or any method set out in paragraph 4 above.

17. The Royal Commission will serve you with a notice to produce your witness statement.

18. If you need help providing your statement (and any documents), please contact the Royal Commission by email to DRCsolicitor@royalcommission.gov.au, or any method set out in paragraph 4 above.
Providing your witness statement electronically


20. If you are referring to documents in your statement that do not have a Document ID, please contact the Solicitors Assisting, who will give you a Document ID for each of the documents. The Document ID for each document needs to fit with other Document IDs used by the Royal Commission, so please do not create your own Document IDs.

21. If you have identified Document IDs for each document (in accordance with the Document Management Protocol set out in Part 4 of the Document Production Guideline), or once the Solicitors Assisting have given you a Document ID for each document, please use those Document IDs in your witness statement when you refer to the relevant document. If you want to use exhibit numbers as well (e.g. Exhibit JS-1, Exhibit JS-2), please also include the Document ID in brackets.

22. Please give your witness statement to the Royal Commission by uploading it to our secure file share platform,\(^7\) or, if the Royal Commission has agreed, in another electronic format (for example, on a USB drive, by email to DRCSolicitor@royalcommission.gov.au or on a CD). Please include the following items:

a. a copy of your signed written statement in Portable Document Format (PDF). PDF documents should be machine-readable and word-searchable;

b. a copy of your finalised (but not signed) written statement in its original electronic format (for example, in Microsoft Word format);

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\(^6\) The Royal Commission will separately publish the Document Production Guideline.

\(^7\) Instructions on how to access and upload files to the secure file share platform will be provided to you. If you have not received these instructions and want to provide files using this platform, please email DRCnotices@royalcommission.gov.au.
c. a subfolder (if that is possible in the format in which you are providing your material) named 'Exhibits':

i. containing all documents referred to in your statement, if you have not already given those documents to the Royal Commission, either in their original electronic format (for example, in Microsoft Word format) or in PDF. If you are using a document management database, please comply with the Document Management Protocol set out in Part 4 of the Document Production Guideline;

ii. this folder should not include a copy of your statement; and

d. an ‘Index of Documents’ in Microsoft Word or Excel format (not PDF). In your index, please list all documents referred to in your statement, and include (at least) the following information (in separate columns) for each document:

i. the Document ID (Identified in accordance with the Document Management Protocol set out in Part 4 of the Document Production Guideline or as given to you by the Solicitors Assisting for your documents);

ii. the corresponding Exhibit number (e.g. JS-1), if you have used Exhibit numbers in your statement;

iii. the date of the document; and

iv. a description of the document. Please use a plain English description. Please do not simply use the document’s electronic file name.

23. If you are providing material referred to in paragraph 22 above to the Royal Commission by email, please include the following information in the subject line of the email:

a. the hearing for which you have prepared your statement (for example, Case Study XX);

b. the name of the witness and/or person who is providing the material.
Part D

Giving evidence at a hearing

24. If you are required to give evidence at a hearing, you will be given a ‘Summons to Appear before the Commission’. The Solicitors Assisting will let you know as early as possible when (date and time) you will be required to give evidence.

25. If you are unavailable to give evidence on a particular date, please tell the Solicitors Assisting as early as possible:

   a. when you are unavailable; and

   b. why you are unavailable.

26. If you are required to give evidence at a hearing, the Royal Commission will support you to give evidence in the way that best suits you. Please tell us if you need support to give your evidence. For example, we may:

   a. allow you to give your evidence from a place outside the hearing room, with a video link to the hearing room;

   b. allow you to give your evidence behind a screen or partition (so that you do not have to see the public or other people in the hearing room, but so that the Commissioner(s) can still see you);

   c. allow you to give your evidence with the support of a relative, friend or other support person;

   d. exclude certain people (for example, members of the public) from the hearing room while you give your evidence;

   e. direct that your evidence must not be published, or limit how it is published;

   f. allow you to give your evidence with the help of an interpreter or a person who will help you communicate; and/or

   g. allow you to give evidence with the assistance of aids or equipment.
27. As a general rule, if you are giving evidence at a hearing, you will be asked to adopt your witness statement (in written or other form) as your primary evidence (evidence-in-chief). The Commissioners may allow Counsel Assisting or your legal representative to ask you further questions about your primary evidence (evidence-in-chief). The Commissioners may also allow other people’s legal representatives to ask you questions (that is, to cross-examine you) about your evidence. Please read Practice Guideline 4 for more information on the conduct of hearings.

28. In general, the Royal Commission will publish your evidence given at a hearing unless it makes a direction that your evidence should not be published. If you do not want your evidence published, please tell us.

Part E
Witness expenses and financial assistance

29. The Royal Commission will publish information about any financial assistance available for witnesses who are asked to give evidence and people who are given leave to appear at a hearing as soon as that information is available.

Part F
Expert witnesses

30. Expert reports will usually be obtained and tendered by Counsel Assisting.

31. An expert report must:
   
   a. be attached or exhibited to a witness statement; and
b. comply with the Harmonised Expert Witness Code of Conduct (Annexure A of the Expert Evidence Practice Note (GPN-EXPT)) of the Federal Court of Australia.⁸

The Honourable Ronald Sackville AO QC
Chair
Date Issued: 12 September 2019