PRACTICE GUIDELINE 4
CONDUCT OF HEARINGS

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 (collectively, the Royal Commission). This Guideline should be read together with the Royal Commissions Act 1902 (Cth), the relevant State Acts, the terms of reference contained in the Letters Patent, and all other practice guidelines published by the Royal Commission.

2. This Guideline sets out general guidance about:
   a. the conduct of hearings before; and
   b. the production of certain documents to,
the Royal Commission.

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

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1 Letters Patent dated: 4 April 2019 (Cth) and 13 September 2019, 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 1995 (Tas), Inquiries Act 2014 (Vic) and Royal Commissions Act 1968 (WA).

4. If you would like help dealing with the Royal Commission, please:
   
a. call us on 1800 517 1994 (between 9:00am-5:00pm AEDT Monday-Friday except on public holidays); or

b. email us at DRCEnquiries@royalcommission.gov.au; or

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

LEAVE TO APPEAR

Part B

When the Royal Commission may grant leave to appear

5. Leave to appear gives a person5 to whom it is granted permission to participate in a public hearing, so far as the Royal Commission allows.

6. If you are granted leave to appear, you are entitled to participate in the public hearing for which you have been given that leave, so far as the Royal Commission allows. If you are granted leave to appear before the Royal Commission, you may be represented by a legal representative. Please see paragraph 16 below for details about how you may participate in a hearing if you are granted leave to appear.

7. You may be granted leave to appear if you have a direct and substantial interest in a hearing, part of a hearing or the subject of inquiry, for example:

   a. you have been given a ‘Summons to Appear before the Commission’, requiring you to give evidence at a hearing, and you are seeking leave to appear so that you can be represented for the whole hearing (not just while you are giving evidence);6

   b. you are the subject of an inquiry that is part of the relevant public hearing; or

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4 If you would like to use the National Relay Service to call us, please phone 133 677.

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.

6 If you are required to give evidence, you will automatically be taken to have leave to appear to be legally represented while you give evidence. You only need to apply for leave to appear if you want to be represented for other purposes of a hearing.
c. you are likely to have adverse allegations made against you.

8. You may seek leave to appear at any time if something that has happened during a hearing leads you to believe that you may have a direct and substantial interest in the subject of inquiry.

9. The Commissioner(s) may, at any time:

   a. vary or withdraw; or

   b. change or add limitations or conditions to,

   a person’s leave to appear before the Royal Commission.

Part C

Process for applications for leave to appear

10. The Royal Commission will hold hearings to inquire into, and receive evidence about, topics falling within the terms of reference.

11. The Royal Commission will publish the details, subject matter and scope of upcoming public hearings on its website and in the media.

12. The Royal Commission will publish information about the intended scope of each of its hearings. If you believe you have a direct and substantial interest in the subject matter of a hearing (see paragraph 7 above for examples of direct and substantial interest), you are invited to apply in writing for leave to appear at the time that we publish that information. If you are unable to or do not wish to apply in writing or you need assistance, please contact us by any method set out in paragraph 4 above.

13. If you want to apply for leave to appear, please:

   a. fill out the form ‘Application for Leave to Appear at a Hearing of the Royal Commission’, which will be made available on our website following the opening hearing;

b. write a short submission setting out why you have a direct and substantial interest in
the relevant hearing (see paragraph 7 above for examples); and

c. send the form and the submission to the Royal Commission by email (to
DRCSolicitor@royalcommission.gov.au) by the date required.

14. The Royal Commission will either:

a. determine your application for leave to appear before the relevant hearing, based on
the application and submission, and tell you or your legal representative what its
decision is; or

b. tell you or your legal representative that you need to attend a hearing on a specified
date to give the Royal Commission further information about the application.

15. The Royal Commission will not grant any person unconditional leave to appear. No general,
open-ended leave to examine, cross-examine, or tender evidence will be given to any
person.

16. If you are granted leave to appear:

a. your leave will be confined to the hearing of the particular inquiry in which you have a
direct and substantial interest and subject to conditions, such as limiting the particular
topics or issues upon which you may examine or cross-examine a witness;

b. you will be entitled to participate in the hearing concerning the particular inquiry,
subject to directions of the Royal Commission and to such extent considered
appropriate;

c. you, or your legal representative, may:

   i. subject to paragraphs 26 and 27 below, apply to have evidence tendered;

   ii. apply for leave to cross-examine a witness; and

   iii. make submissions about the findings available to the Royal Commission following
the relevant hearing; and
d. the Commissioners may decide the nature and extent of any other conditions attaching
to any grant of leave, taking into account all relevant considerations, including your
individual circumstances and the content of your application for leave.

17. If you:

a. have been granted leave to appear and you want to raise a procedural or legal matter;
or

b. want to make a submission about the decision on your application for leave to appear,

please write to the Solicitors Assisting the Royal Commission (Solicitors Assisting) by email
to DRCSolicitor@royalcommission.gov.au, explaining the issue you want to raise and
providing a brief outline of the submission you want to make.

EXAMINATION AND CROSS-EXAMINATION

Part D

18. Unless the Commissioner(s) grant leave to another person, only Counsel Assisting the Royal
Commission (Counsel Assisting) will be allowed to examine and cross-examine any witness.8

19. No general, open-ended leave to cross-examine will be given to any person. In deciding
whether a person has a sufficient interest to allow them to cross-examine a witness, the
Commissioner(s) may ask the person seeking to cross-examine to:

a. identify why they want to cross-examine the witness;

b. explain the issues about which they want to ask the witness questions; and

c. identify any documents that they want to ask the witness to look at.

8 The Commissioner(s) may also ask a witness questions at any time while the witness is giving evidence.
20. As a general rule, the Commissioner(s) will limit cross-examination as follows:

a. No repetitive questioning or duplication will be allowed. If multiple people represented before the Royal Commission have a common or similar interest in the evidence of a particular witness:

i. their representatives should talk to each other and Counsel Assisting before the witness is called;

ii. all relevant representatives and Counsel Assisting should try to agree on the order and general areas or subjects of cross-examination;

iii. if the relevant representatives cannot agree, the Commissioner(s) will decide the order of examination and cross-examination (noting the generally proposed order in paragraph 21 below). In general, the Commissioner(s) will not allow cross-examiners to ask questions about general areas or subjects covered by earlier cross-examination.

b. Cross-examination will be limited to matters in dispute. The Commissioner(s) may also set further limits (in accordance with the power conferred on them). For example, the Commissioner(s) may limit the particular topics or issues on which, the time for which, or the way in which, a person can cross-examine a witness.

c. Cross-examination on topics that are only relevant to a witness’s credibility will not be allowed, since the Commissioners are conducting an inquiry, rather than a judicial proceeding.

d. Cross-examination will be permitted only to the extent that the Commissioner(s) believe it will help them to investigate and report on the subject matter of the terms of reference.
21. As a general rule, the order of examination and cross-examination will be as follows, subject to the Commissioner(s) deciding that the order should be changed and granting leave accordingly:

a. Counsel Assisting will take each witness’s primary evidence (evidence-in-chief), generally by:
   i. the witness swearing or affirming that the evidence they give will be true;
   ii. the witness confirming to the Royal Commission that their witness statement is correct;
   iii. Counsel Assisting tendering the witness statement; and
   iv. Counsel Assisting asking any extra questions, if required;

b. Counsel Assisting may then cross-examine the witness;

c. other people with leave to appear may then, with specific leave, ask the witness questions;

d. if the witness is legally represented, the witness’s legal representative may then ask the witness questions; and

e. finally, Counsel Assisting may ask the witness any additional questions arising from the witness’s earlier evidence.

TENDERING DOCUMENTS OTHER THAN WITNESS STATEMENTS

Part E

22. Subject to directions from the Royal Commission, Counsel Assisting will decide:

   a. which documents will be tendered; and

   b. when those documents will be tendered.

23. Before the opening of a hearing, Counsel Assisting or the Solicitors Assisting may decide to give confidential access to documents that are likely to be tendered as exhibits at the
hearing to any person granted leave to appear at that hearing. The Royal Commission will
generally make a direction prohibiting these documents from being published until they
have been tendered. Copies of documents that are likely to be tendered will generally not be
provided to any other person before they are tendered.

24. If you are provided with access to documents that are likely to be tendered, you should think
about whether you want to ask the Royal Commission to make a direction restricting the
publication of a document or any part of a document. If you want a document or part of a
document to be kept confidential after it is tendered, please contact the Royal Commission
as early as possible before the hearing. If you want to claim confidentiality, please refer to
Part E of Practice Guideline 1.

25. Counsel Assisting may also tender other documents during the course of a hearing. If you
have a significant interest in the issues raised by a document being tendered, the Royal
Commission will provide you with a copy of that document relevant to those issues.

26. If you want to give a document to the Royal Commission during a hearing:

a. you must notify the Solicitors Assisting (by any method set out in paragraph 4 above)
and provide a copy of the document to the Solicitors Assisting within a reasonable time
before the hearing (not less than 7 days, except in exceptional circumstances);

b. the Commissioners may ask you to produce other documents as well; and

c. Counsel Assisting will decide whether or not the documents will be tendered.

27. You may only apply directly to the Commissioners to tender a document if the process
outlined in paragraph 26 above has been completed and Counsel Assisting has refused to
tender the document.
SUBMISSIONS RELATING TO HEARINGS

Part F

Timetable for submissions

28. At the end of each hearing, the Royal Commission will allow people involved in that hearing to provide submissions responding to the evidence given during the hearing.

29. As a general rule, people should provide their submissions to the Royal Commission in writing. However, we will support you to provide your submissions in the way that best suits you. Please tell us if you need support to provide your submissions.

30. Unless the Royal Commission directs otherwise, submissions should be provided at the conclusion of a hearing as follows:

   a. Counsel Assisting will prepare and provide written submissions to all people with leave to appear (typically within 4 weeks after the end of the relevant hearing);

   b. any person with leave to appear must provide any submissions in reply to the Solicitors Assisting (typically within 4 weeks of receiving Counsel Assisting’s submissions);

   c. the Solicitors Assisting will provide all submissions of any person with leave to appear to all others with leave to appear; and

   d. Counsel Assisting may prepare and provide written submissions in response to any submissions of a person with leave to appear (typically within 2 weeks of receiving the relevant party’s submissions).

Providing submissions to the Royal Commission electronically


32. If you are referring to documents in your submissions that do not have a Document ID, please contact the Solicitors Assisting, who will give you a Document ID for each of the

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9 The Royal Commission will separately publish the Document Production Guideline.
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.

33. 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 submissions 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.

34. Please give your submissions to the Royal Commission by uploading them to our secure file share platform,\(^\text{10}\) 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 hearing submission in Portable Document Format (PDF). PDF documents should be machine-readable and word-searchable;

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

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 submissions, 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 submissions; and

\(^\text{10}\) 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.
d. an ‘Index of Documents’ in Microsoft Word or Excel format (not PDF). In your index, please list all documents referred to in your submissions, 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 submissions;

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.

35. If you are providing material referred to in paragraph 34 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 submissions (for example, Case Study XX);

   b. the name of the expert and/or party who is providing the material.

36. If you need help providing your submissions (and any documents), please contact the Royal Commission by any method set out in paragraph 4 above.

The Honourable Ronald Sackville AO QC
Chair
Date Issued: 6 November 2019