



## **PRACTICE GUIDELINE 3**

### **Conduct of Hearings**

#### **INTRODUCTION**

1. This Practice Guideline relates to the conduct of public hearings of the Royal Commission into the Home Insulation Program (Commission). Public hearings are scheduled to commence in Brisbane on Monday 17 March 2014.
2. A list of the witnesses the Commission intends to call during the public hearings will be available on the Commission's website at [www.homeinsulationroyalcommission.gov.au](http://www.homeinsulationroyalcommission.gov.au) in the near future, and will be updated during the course of the public hearings.

#### **Giving evidence before the Commission**

3. The Commission will decide whether a witness who has presented a statement will be required to attend a hearing for the purpose of examination.
4. If any person wishes for a witness who has given a statement, but who is not proposed to be called by Counsel Assisting, to be called in the public hearings, they should advise the Office the Royal Commission as soon as possible, providing a submission as to why that witness should be called.
5. In general, a statement that the Commission intends to take into evidence will be made available to the parties with leave to appear in the Commission's data room. Statements may be later made available on the Commission's website. The Commission may make orders in relation to the publication or suppression of documents, including statements made by witnesses, if he considers it appropriate or necessary to do so.
6. Where witnesses are called to give oral evidence, the witness will be first examined by Counsel Assisting. The witness may then be examined by, or on behalf of, any person granted leave that is considered by the Commissioner to have sufficient interest to do so. The legal representative of the witness may then examine the witness followed by a re-examination by Counsel Assisting. Duplication and repetition must be avoided. It is an offence not to answer questions posed by the Commission or to answer them falsely.
7. In determining whether a person has sufficient interest to examine a witness, the Commissioner may call upon the examiner to:
  - a. identify the purpose of the examination; and

- b. set out the issues to be canvassed.
- 8. The Commissioner may:
  - a. Limit the particular topics or issues upon which a party can examine ; and
  - b. Impose time limits upon examination.
- 9. The Commission will determine the order in which persons authorised to examine a witness may examine that witness subject to paragraph 6.. The order will generally be determined by the degree of interest the person has in the evidence of the witness.
- 10. Once a witness has been examined on a particular issue no further examination on that issue will be allowed unless the person wishing to examine the witness on that issue can demonstrate the proposed examination differs to a significant degree from the examination that has already taken place.
- 11. A copy of any document proposed to be put to a witness which has not been previously been provided to the Commission must be provided to Counsel Assisting through the Office of the Royal Commission as soon as possible after a decision is made to use the document and, in all cases, prior to its intended use.
- 12. If any person granted leave to appear wishes for any person not identified by the Commission as being a person who is to give oral evidence, or who has not provided a statement to the Commission, to give evidence at a public hearing, the person must notify the Office of the Royal Commission of the name of the witness and provide a summary of their evidence as soon as possible prior to the relevant hearing. The Office of the Royal Commission may assist in the preparation of that summary or interview the witness, and take statements if necessary. Counsel Assisting will decide whether or not to call the witness. An application may be made directly to the Commissioner to call the witness only after the above procedure has been completed, and Counsel Assisting has refused to call the witness.

#### **Documents which may be tendered in hearings**

- 13. Subject to the control of the Commissioner, Counsel Assisting will determine which documents are to be referred to in the public hearings.
- 14. Before the commencement of any public hearing of the Commission, each person or organisation authorised to appear at that hearing may be given confidential electronic access to certain documents likely to be referred to at the public hearing.
- 15. One of the purposes of providing this access is to enable persons or organisations to identify whether any application should be made for a suppression order in relation to any document or any part of a document intended to be referred to.

16. Copies of these documents will not otherwise be provided to any person or organisation. Additional documents may be referred to by Counsel Assisting during the course of the public hearing. Where such additional documents are referred to, the Commissioner will provide a person or organisation with a copy of the relevant document where the person or organisation has a significant interest in the issues to which each document relates.
17. Any person or organisation wishing to have a document placed before a public hearing must notify the Office of the Royal Commission by providing a copy of the document to the Commission staff within a reasonable time before the public hearing. Commission staff may require the production of other documents. Counsel Assisting will decide whether or not to tender the documents. An application may be made directly to the Commissioner to tender a document only after this procedure has been completed, and Counsel Assisting has refused to tender the document.

### **Non-Publication Directions**

18. The Commission has powers under the *Royal Commissions Act 1902* (Cth) to direct that any evidence given before it not be published. The Commonwealth Act provides that the Commission can direct that any evidence given before it, the contents of any document produced and information which might enable a person who has given evidence before the Commission to be identified, not be published except as specified.
19. The Commission will ensure that confidentiality is maintained where the Commission considers that it is necessary. Any person who feels a particular concern in this area is encouraged to contact the Office of the Royal Commission.
20. In determining whether to make a non-publication direction, the Commission will consider whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned and, amongst other matters, will have regard to:
  - a. The stage the investigation has reached, and the relative advantages or disadvantages involved in making a direction;
  - b. The nature of the allegations and credibility of relevant witnesses;
  - c. The seriousness of the allegation or complaint being investigated; and
  - d. Any risk of undue prejudice to a person's reputation.
21. Any person granted confidential electronic access to documents or otherwise given access to documents which are proposed to be referred to at a public hearing should notify the Office of the Royal Commission of any application for a non-publication direction in relation to any document or part of a document. The application should clearly identify the material sought not to be published and reasons why it is suggested

that the material should not be published. The Commissioner will determine whether or not to hear oral submissions in support of such written applications.

22. Those persons making written applications for non-publication directions will be advised of the decision once the applications have been determined by the Commissioner.

#### **Publication and Access to Evidence**

23. In respect of all evidence, oral and documentary, the following will apply unless varied either generally or in respect of particular evidence:
  - a. transcripts of evidence in public hearings will be uploaded to the Commission's website as soon as they are available;
  - b. the evidence of any witness before the Commission will be published by the Commission unless a direction is made prohibiting or restricting the publication of particular evidence;
  - c. any person (or the legal representative of that person) having leave to appear before the Commission will have access to any book, document or writing referred to in evidence for the purpose only of appearance before the Commission and subject to any other direction made by the Commissioner;
  - d. for the purpose of, and to the extent necessary for the public reporting of the proceedings of the Commission, any representative of a newspaper, magazine, radio station, online publication or television channel may inspect and take extracts from any book, document or writing referred to in evidence after it has been notified as available for inspection by counsel assisting, subject to the condition that:
    - i. it not be used or permitted to be used for any purpose other than the public reporting of the proceedings of the Commission; and
    - ii. any part of the contents the subject of a direction prohibiting its publication must not be published. If it is believed that any such direction may obstruct proper reporting of any matter of significance, application may be made to vary or lift the non-publication direction.
24. The Commission has developed Media Guidelines for Public Hearings which are available on the Commission's website. Members of the media should refer to these guidelines for further information on publication and access to evidence.
25. Any application for access should be made in writing, in the first instance, to the Office of the Royal Commission at [legal.homeinsulation@ag.gov.au](mailto:legal.homeinsulation@ag.gov.au).

### **Telephone or Video Proceedings**

26. At the discretion of the Commissioner, part of any hearing may be conducted either by telephone or video link.
27. Where evidence is to be given either by telephone or video link, the Office of the Royal Commission will make the necessary arrangements and provide the details of the proceedings, the witness or witnesses, location, telephone numbers and the date, time and estimated duration to the parties. Where the Commissioner considers it appropriate, details will be published on the Commission's website.

### **Interpreters**

28. Interpreters will be provided by the Commission as needed. Witnesses and parties must ensure that the Office of the Royal Commission is advised of the need for an interpreter as soon as reasonably practicable, and, in any event, in sufficient time for arrangements to be made. Interpreters will be accredited at the first professional level, Interpreter, with the National Authority for Accreditation of Translators and Interpreters (NAATI). Only in languages where no professional level interpreter is accredited will a Paraprofessional Interpreter be utilised.

### **General**

29. Nothing in this practice guideline should be taken as limiting the Commissioner's powers, whether at the request for any person or on the Commissioner's own initiative, to treat any material or information as confidential and to take any steps in respect of the preservation of such confidentiality.

Ian Hanger AM QC  
**Commissioner**  
28 February 2014