



PRACTICE DIRECTION NO. 3
CONDUCT OF PUBLIC HEARINGS

15 JULY 2020

As Amended on 20 August 2020

INTRODUCTION

1. This Practice Direction (**PD-3**) relates to the conduct of the public hearings that will be held as part of the work of the Board of Inquiry into the COVID-19 Hotel Quarantine Program (**Inquiry**).
2. This Practice Direction is issued under section 63(1) of the *Inquiries Act 2014 (Vic)* (**Act**). It should be read in conjunction with the Act and with the terms of reference contained in the Order establishing the Inquiry.
3. This Practice Direction sets out the way in which the evidentiary public hearings of the Inquiry will be conducted. Persons seeking to participate in the public hearings should consult Practice Direction 2 which relates to applications for leave to appear.

GENERAL MATTERS

4. The Inquiry will conduct evidentiary public hearings from August 2020 on dates to be fixed.
5. The Inquiry will endeavour to publish a list of the topics to be examined in the public hearings in advance. That list may be amended as the Inquiry proceeds. The Inquiry will also, from time to time, publish a list of the witnesses who will attend and give evidence at the hearings.
6. Subject to any contrary direction of the Inquiry pursuant to the Act, the public hearings will be open to the public via live streaming.
7. Subject to any changes in public health directions made under the *Public Health and Wellbeing Act 2008*, or by leave granted by exception, only designated officers of the Inquiry, including Counsel Assisting the Inquiry (**Counsel Assisting**), will be physically

present during the public hearings. Persons granted leave to appear and their legal representatives will attend via online video platform.

WITNESSES

8. Subject to the control of the Inquiry, Counsel Assisting will determine -
 - (a) who is to be called as a witness at the public hearings;
 - (b) the order in which those witnesses are called; and
 - (c) which documents are to be tendered.
9. The Inquiry will require witnesses to give evidence on oath or affirmation.
10. The Inquiry may require witnesses to give evidence concurrently with other witnesses.
11. All persons required to give evidence will be served with a notice under section 64 of the Act requiring their attendance to give evidence.

IDENTIFICATION AND PREPARATION OF WITNESSES

12. Counsel Assisting, with the assistance of the Solicitors Assisting the Inquiry, will:
 - (a) identify and contact each individual they wish to give evidence as a witness before the Inquiry;
 - (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; and
 - (c) obtain witness statements in accordance with this Practice Direction.
13. Unless the Inquiry otherwise determines, any witness called in the public hearings will give evidence by way of both written witness statement and oral evidence.
14. Where a proposed witness is not legally represented, Counsel Assisting and Solicitors Assisting the Inquiry will meet with the proposed witness for the purpose of preparing their witness statement.
15. Where a proposed witness is legally represented -
 - (a) Counsel Assisting will prepare, and Solicitors Assisting will provide, an outline of the topics that should be addressed in a proposed witness statement;
 - (b) the proposed witness will be assisted by their legal representative in the preparation of their witness statement;
 - (c) the witness statement must follow, and address each topic in, the outline; and

- (d) Solicitors Assisting will communicate with the witness's legal representatives about the time by which the statement will be required, and where relevant and appropriate, about conferring with the witness prior to the date on which the witness gives evidence.

EXAMINATION OF WITNESSES AT THE PUBLIC HEARING

Evidence in chief

- 16. All witnesses called to give evidence will be examined by Counsel Assisting who will -
 - (a) invite the witness to adopt their witness statement as their evidence in chief; and
 - (b) examine the witness on topics that are -
 - (A) not covered in their witness statement;
 - (B) the subject of different or contradictory information available to the Inquiry;
or
 - (C) otherwise matters which the Inquiry will be assisted by being canvassed in oral evidence.
- 17. Where practicable, Counsel Assisting will notify witnesses in advance of the hearing of any topics on which questions will be asked of the witness that are not covered by their witness statement. Counsel Assisting may, however, ask questions of the witness irrespective of whether notice is given.

Cross examination

- 18. Examination or cross-examination of witnesses by any other party will be by leave only and no open-ended leave will be given.
- 19. Any person who has leave to appear and who wishes to examine or cross examine a witness should consult with Counsel Assisting, via email in the first instance, regarding topics to be canvassed and whether those matters are matters that can be dealt with by Counsel Assisting. Counsel Assisting can be contacted at:

Tony Neal QC – tony.neal@quarantineinquiry.vic.gov.au

Rachel Ellyard – rachel.ellyard@quarantineinquiry.vic.gov.au

Ben Ihle – ben.ihle@quarantineinquiry.vic.gov.au

Steven Brnovic - steven.brnovic@quarantineinquiry.vic.gov.au

20. A person who has leave to appear and who wishes to seek leave to examine or cross-examine a witness must notify Counsel Assisting in accordance with paragraph 19 at least 2 working days before the day on which the witness is scheduled to give evidence, in accordance with the timetable to be published by the Inquiry from time to time, and inform Counsel Assisting of the matters set out in paragraph 22 below.
21. 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 20, that person may nevertheless seek leave, and may be called upon to specify, in addition to the matters set out in paragraph 22, why notice was unable to be given in advance.
22. In determining whether a person has a sufficient interest to examine or cross-examine a witness, the Inquiry may call upon the party making the application to set out in writing or in oral submissions:
 - (a) the purpose of the cross-examination;
 - (b) the issues to be canvassed;
 - (c) the proposed duration of the examination; and
 - (d) details (with copies provided) of any documents to which they propose to take the witness.
23. Wherever possible the Inquiry will determine applications for leave in chambers and in advance of the date on which the witness is to be called.
24. Leave to cross examine will only be granted to the extent it will assist the Inquiry.
25. Where leave is granted -
 - (a) that leave may specify the issue or issues about which questions may be asked;
 - (b) questioning must be limited to matters within the scope of the Inquiry;
 - (c) questioning which is repetitive of matters already raised by Counsel Assisting will not be permitted;
 - (d) questions going only to credit will not be permitted;
 - (e) parties with a common interest in the evidence of a witness will be expected to agree amongst themselves on the division of topics amongst them;
 - (f) revisiting areas or subjects covered by earlier questioning by parties with a common interest will not be permitted; and

- (g) in default of agreement the Inquiry will direct the order of questioning; and
 - (h) any leave granted to the legal representative of a witness to examine their client will be confined to matters not already in evidence.
26. After any questioning by other parties, Counsel Assisting may re-examine the witness.

DOCUMENTS

27. Counsel Assisting will determine, subject to the Inquiry's control, which and when documents are to be tendered.
28. Before the commencement of the public hearing, each person granted leave to appear at the hearing may at the discretion of Counsel Assisting or Solicitors Assisting be given confidential access to documents that are likely to be tendered as exhibits and which could affect that person's interests. The time at which such access will be granted is in the discretion of the Inquiry and may be granted in tranches subject to the order in which issues are to be addressed in the public hearing.
29. One purpose for which confidential access may be granted is to enable the identification of any application for a restricted publication order in relation to a document or part of a document.
30. Additional documents may be tendered by Counsel Assisting during the course of a public hearing. Copies of any such documents will be provided to persons granted leave to appear.
31. A copy of any document proposed to be put to a witness must be provided to the Solicitors Assisting the Inquiry as soon as the decision is made to use the document and in all cases prior to the date on which it is intended to be used.
32. If a person who has been granted leave to appear seeks to have a document tendered at a public hearing:
- (a) that person must provide a copy of it to Solicitors Assisting the Inquiry as soon as the decision is made to place the document before the public hearing;
 - (b) the Inquiry may require the production of other documents to assist in determining whether the document in question should be received; and
 - (c) Counsel Assisting will decide whether or not the documents are to be tendered.

RESTRICTED PUBLICATION ORDERS

33. The Inquiry may restrict publication of information relating to the public hearings in accordance with section 73 of the Act.
34. Subject to section 73 and any other direction made by the Inquiry:
- (a) transcripts of the evidence at the public hearings will be uploaded onto the Inquiry'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 Inquiry's website as soon as practicable after the witness has given their evidence; and
 - (c) documents tendered at the public hearings will be available on the Inquiry's website as soon as practicable after the document has been tendered.
35. A person who has been granted leave to appear at the public hearing and who wishes to apply for a restricted publication order in respect of any witness or any evidence to be given during a public hearing must -
- (a) give notice of the application to Solicitors Assisting as soon as the basis for the application is identified and in all cases prior to the date on which the witness or evidence is to be before the public hearing; and
 - (b) in that notice set out the basis of the application in writing by reference to the matters in section 73.
36. Unless the Inquiry otherwise directs in a particular case, restricted publication order applications will be determined on the papers.
37. The Inquiry will give notice to media organisations of any application for a restricted publication order.

CONTACTING THE INQUIRY

38. Any questions about any matters dealt with in this Practice Direction or other matters concerning the public hearings should be directed to Solicitors Assisting at: lawyers@quarantineinquiry.vic.gov.au.

Issue date: 15 July 2020

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

THE HONOURABLE JENNIFER COATE AO

Board of Inquiry into the COVID-19 Hotel Quarantine Program