



PRACTICE DIRECTION NO. 5 – HEARINGS

Released 12 April 2022

INTRODUCTION

1. This Practice Direction is issued under section 5(3)(a)(iii) of the *Commissions of Inquiry Act 1995* (Tas) (Act) and relates to hearings to be conducted as part of the work of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings (Commission).
2. This Practice Direction should be read in conjunction with the Act and the Order under section 4(1) of the Act dated 15 March 2021 establishing the Commission (Order).
3. This Practice Direction may be varied or replaced from time to time. The Commission may, at any time, depart from this Practice Direction if it considers it appropriate to do so, subject to the Act and the Order.

FOCUS OF HEARINGS

4. The Commission's approach to its inquiry is outlined in *Practice Direction No. 1 – General Information* and on the Commission's website.
5. One of the ways in which the Commission will inform itself is by conducting hearings. This Practice Direction outlines the Commission's approach to its hearings.
6. In accordance with the Order, the focus of the hearings will be on examining and evaluating systemic issues, laws, policies, practices and procedures, but will also be informed by individual cases where appropriate.
7. The hearings will review how children can be better protected in institutional settings, what the Tasmanian Government can do to achieve best practice in the prevention and reporting of child sexual abuse, including eliminating any barriers to reporting, and what the Tasmanian Government can do to address or alleviate the impact of past and future child sexual abuse in institutional settings.

DATES OF HEARINGS

8. The Commission intends to conduct six weeks of hearings during the period from 2 May to 5 August 2022. Further hearings may be scheduled if the Commission considers it appropriate to do so. Hearing dates will be published on the Commission's website.

PUBLIC ACCESS TO HEARINGS

9. The Commission's hearings will be held in Hobart and Launceston and will be live streamed on the Commission's website.
 10. Members of the public, including the media, are invited to attend in person or watch the live stream.
 11. Subject to any direction or order of the Commission to the contrary, the hearings will generally be open to the public.
-



12. Some of the evidence given at the hearings may be subject to orders that restrict or prohibit the publication of information (discussed below) and some hearings may be closed to the public (discussed below).
13. The location of the hearing venues will be published on the Commission's website.

COVID-SAFE HEARINGS

14. The health, safety and wellbeing of the community and Commission staff is the highest priority of the Commission. The Commission will conduct its hearings in accordance with its *COVID-19 Vaccination Policy* (Vaccination Policy) which is available on the Commission's website. In accordance with this Vaccination Policy, all individuals (including witnesses, lawyers, members of the public and media) must be fully vaccinated in order to attend the hearings in person, and must show proof of their vaccination status upon entry into the hearing venues and to a Commission staff member upon request. Further information in relation to these requirements is available in the Vaccination Policy.
15. The Commission will conduct its hearings in accordance with any relevant directions made under the *Public Health Act 1997* (Tas). Under those Directions, or at the Commission's discretion as a condition of entry to the hearings, face masks may be required to be worn at the hearing venues.
16. Due to the need to conduct the hearings in accordance with COVID-safe practices, and the consequential need to limit the number of people in the hearing room, it may also be necessary to limit the people in the hearing room to:
 - the Commissioners
 - Counsel Assisting the Commission
 - the Commission's lawyers and staff
 - any witnesses who have been issued a notice to attend to give evidence on the relevant date and time (and any support person for such witnesses)
 - the legal representatives of any person or organisation with leave to appear at the relevant hearing, and
 - any person or organisation with leave to appear at the relevant hearing.

RULES OF EVIDENCE

17. In accordance with section 20 of the Act, the Commission is not bound by the rules of evidence.
18. Subject to compliance with the Act and the Order, the Commission may determine its own procedures in conducting its inquiry and controlling its proceedings.¹

¹ *Commissions of Inquiry Act 1995* (Tas) ss 5(3)(a)(iii), 12(1)(a).



WITNESSES

19. Subject to the control of the President of the Commission (or presiding Commissioner), Counsel Assisting the Commission will determine:
 - who is to be called as a witness at the hearings, and
 - the order in which those witnesses are called and examined.
20. It may be necessary for Counsel Assisting to call some witnesses to give evidence on more than one occasion.
21. Witnesses to be called by Counsel Assisting may be identified from:
 - written submissions made to the Commission
 - consultations and sessions with a Commissioner
 - other research activities by the Commission, and
 - submissions made by persons or organisations granted leave to appear (discussed below).
22. The Commission may decide to receive the evidence of a witness orally or by written statement or both.
23. The Commission may request any person or organisation to give evidence by serving them with a notice to attend to give evidence or to prepare a statement.
24. The Commission will generally require witnesses to give evidence on oath or affirmation.
25. The Commission may require witnesses to give evidence concurrently with other witnesses.

Leave to cross-examine a witness

26. The Commission controls who participates in its hearings. Leave to appear is the term used when the Commission grants permission to a person or organisation to participate in its hearings by allowing that person or organisation to ask questions of witnesses and make arguments or submissions to the Commissioners.
27. How to apply for leave to appear is outlined in *Practice Direction No. 2 – Leave to Appear* and on the Commission's website.
28. Subject to the control of the President of the Commission (or presiding Commissioner), all witnesses will be called to give evidence and then be examined by Counsel Assisting. Where a person or organisation has been granted leave to appear, that person or organisation (or any legal representative) may also seek leave to examine or cross-examine a witness. Leave to examine or cross-examine a witness will be subject to the discretion of, and any limitations or conditions imposed by, the President (or presiding Commissioner).



RESTRICTED PUBLICATION ORDERS

29. The Commission may, in accordance with section 14 of the Act, make an order prohibiting or restricting the public reporting of certain information (restricted publication order).
30. A Commissioner may make a restricted publication order prohibiting or restricting the publication of:
 - any information that may enable a person who has given, or who is to give, information or evidence to the Commission to be identified
 - the identity of any other person, or
 - any information or evidence given to the Commission for the purposes of its inquiry.
31. A Commissioner may make a restricted publication order if it is satisfied that the public interest in the reporting of that hearing, or the publication of that information, is outweighed by any other consideration, including public security, privacy of personal or financial affairs, or the rights of any person to a fair trial.
32. A person, or their legal representative, may apply in writing for the making of a restricted publication order if they have been:
 - served with a notice requiring them to:
 - appear before the Commission to give evidence orally at a hearing (e.g. a witness)
 - prepare a statement
 - produce any document or thing in their possession or control which the Commission considers relevant to its inquiry, or
 - granted leave to appear in respect of any witness or evidence to be given at a hearing.
33. Notice of any such application must be given to the Commission's lawyers as soon as possible once the basis for the application is identified and three business days before the relevant witness is required to appear before the Commission. A person served with a notice to produce documents or prepare a statement who wishes to apply for a restricted publication order should make the application at the time of production.
34. All applications must be made in writing and must address the basis for the application with regard to the matters (where relevant) identified in section 14 of the Act, including public security, privacy of personal or financial affairs or the right of any person to a fair trial.
35. The Commission may also make a restricted publication order on its own motion.
36. Upon the making of a restricted publication order, the Commission will announce the terms of the order prior to calling a witness at its hearings. Copies of orders will be published outside the door of the hearing room and may be published to the Commission's website.



37. Hearings subject to a restricted publication order may not be live streamed on the Commission's website. Redactions may also be made to the hearing transcript prior to publication (discussed below).
38. Failure to comply with the terms of a restricted publication order is punishable by fine, imprisonment or both.

EXCLUSION ORDERS (CLOSED HEARINGS)

39. The Commission recognises the public interest in its hearings. The Commission also recognises that in some circumstances, it may be necessary or appropriate to receive part or all of the evidence from a witness or witnesses in a restricted or closed hearing.
40. The Commission may, in accordance with section 13(2) of the Act, make an order excluding a person or persons from a hearing (exclusion order). Such orders may, for example, enable a witness to give their evidence privately with only certain people present in the hearing room, such as the Commissioners, Counsel Assisting, the Commission's lawyers and staff, the legal representatives of any person or organisation with leave to appear at the relevant hearing and any support person for a witness. All other people, including media, may be required to leave the hearing room.
41. Closed hearings will not be live streamed on the Commission's website.
42. A person, or their legal representative, may apply in writing for the making of an exclusion order if they have been:
 - served with a notice requiring them to appear before the Commission to give evidence orally at a hearing, or
 - granted leave to appear in respect of any witness or evidence to be given at a hearing.
43. Notice of any such application must be given to the Commission's lawyers as soon as possible once the basis for the application is identified and three business days before the relevant witness is required to appear before the Commission.
44. All applications must be in writing and must address the basis for the application with regard to the matters (where relevant) identified in section 13(2) of the Act, including public security, privacy of personal or financial affairs or the right of any person to a fair trial.
45. The Commission may also make an exclusion order on its own motion.
46. If the Commission intends to make an exclusion order, it will announce that intention to the public during an earlier hearing in accordance with section 13(3) of the Act. Copies of orders will be published outside the door of the hearing room and may be published to the Commission's website.



PUBLICATION OF EVIDENCE

47. Subject to any direction or order of the Commission to the contrary, the Commission proposes to adopt the following procedures in respect of evidence given at the hearings:
- transcripts of evidence at the hearings will be placed on the Commission's website as soon as possible after it becomes available, and generally by 10.00am the following day
 - witness statements of witnesses called to give evidence at the hearings will be available on the Commission's website as soon as possible after the witness has given evidence, and
 - documents received into evidence at the hearings will be available on the Commission's website as soon as possible after the document has been tendered.

COMPLIANCE WITH NOTICES TO APPEAR TO GIVE EVIDENCE

48. From time to time the Commission may issue a notice to compel a person to appear to give evidence as a witness at its hearings (notice to appear) under section 22 of the Act.
49. In accordance with sections 27 and 28 of the Act, a person may be held in contempt of the Commission if they:
- refuse or fail to comply with a notice to appear to give evidence without reasonable excuse (in which case the Commission may apply to a magistrate for a warrant to have that person apprehended and brought before the Commission)
 - refuse to be sworn in by oath or affirmation
 - refuse or otherwise fail to answer a question put by Counsel Assisting or a Commissioner
 - refuse or fail to answer a question put properly by a witness or a legal representative who has been granted leave to ask such a question
 - have appeared before the Commission as a witness and then fail to continue to attend the Commission's hearings each day until excused, or
 - do any other act which, if the Commission were a court, would be in contempt of court.
50. A contempt of the Commission is punishable by a fine, imprisonment or both.
51. A person served with a notice to appear may make a claim to the Commission that the person has a reasonable excuse for failing to comply with the notice. A person may make a claim of reasonable excuse by:
- notifying the Commission's lawyers in writing of the claim, accompanied by a short written submission of no more than five pages setting out the basis upon which each claim is made, and
 - making that claim three business days prior to the appearance date.



52. If the Commission is satisfied the claim of reasonable excuse is established, it may vary or revoke the relevant notice and will advise the applicant in writing. If the Commission is not satisfied the claim of reasonable excuse is established, it will advise the applicant in writing.

PRIOR CONTACT WITH A COMMISSIONER

53. If a person who is to appear before the Commission:

- has a relationship, or has had contact, with a Commissioner outside of the Commission's inquiry, or
- otherwise considers that a Commissioner may have a conflict of interest in relation to that person (or any person or organisation they represent),

that person is encouraged to identify the potential issue to the Commission's lawyers as soon as the issue is identified and, as far as possible, prior to the person appearing before the Commission.

54. Such a relation or contact may include, but is not limited to, contact during or involvement in previous legal proceedings involving the Commissioner (either as a judicial officer, party or witness).
55. Notice of such matters must be given to the Commission's lawyers as soon as the issue is identified and, as far as possible, at least three business days prior to the person appearing. The application must be made in writing and set out a summary of the relevant relationship, contact or conflict of interest.
56. The Commission will consider that information and make a decision as to whether that Commissioner should recuse themselves when that person appears, or declare the nature of the prior relationship or contact at the hearing.

CONTACTING THE COMMISSION

57. Any person wishing to contact the Commission about any matter dealt with in this Practice Direction or any other matter concerning the public hearings should contact the Commission's lawyers at: lawyers@commissionofinquiry.tas.gov.au.