



## PRACTICE DIRECTION NO. 2 – LEAVE TO APPEAR

Released 1 June 2021

### 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 participation in the public hearings that will be held 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). The Commission's power to grant leave to appear at its public hearings arises from sections 5(3)(a)(iii) and 12(1) of the Act.
3. This Practice Direction does not address the conduct of the public hearings which will be addressed in a separate practice direction.
4. This Practice Direction may be varied or replaced at any 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.

### LEAVE TO APPEAR AT THE PUBLIC HEARINGS

#### What is leave to appear?

5. The Commission controls who participates in its public hearings. The Commission will generally decide who will be asked to be witnesses. Leave to appear is the term used when the Commission grants permission to a person or organisation to participate in its public hearings by allowing that person or organisation to ask questions of witnesses and make arguments or submissions to the Commissioners. Leave to appear is not required if the Commission asks you to be a witness.

#### When leave to appear is required and appropriate

6. Applications for leave to appear are only required where a person or organisation seeks to appear, other than as a witness, at the public hearings.
7. All persons and organisations who wish to do so will be able to make written submissions to the Commission in accordance with the process outlined on the Commission's website. A person or organisation does not need leave to appear in order to make a written submission.
8. Similarly, a person or organisation participating in consultations with the Commission, for example at a community consultation, roundtable discussion or private session, does not need leave to appear in order to participate.
9. People who are witnesses at the public hearings also do not need leave to appear.



### **Determining applications for leave to appear**

10. A person or organisation may apply for leave to appear in accordance with the process outlined in paragraphs 20–22 (below).
11. In considering whether an application for leave to appear will be granted to a person or organisation seeking it (an applicant), the Commission may have regard to the following factors:
  - 11.1 whether the applicant has a direct or special interest in the subject matter of the inquiry
  - 11.2 the likelihood that the Commission may make an adverse finding or a finding of misconduct against the applicant
  - 11.3 the ability of the applicant to materially assist the Commission in the inquiry
  - 11.4 the age, safety and relevant experience of the applicant, and
  - 11.5 whether, and if so how, granting leave to appear to the applicant would materially assist the Commission during the public hearings over and above any written submissions the applicant might make to the Commission.
12. An applicant will generally satisfy the criteria for leave to appear when the applicant:
  - 12.1 is the subject of a specific issue or issues the Commission intends to investigate
  - 12.2 may be the subject of an adverse finding or a finding of misconduct, or
  - 12.3 is able to demonstrate that their participation in the hearing will materially assist the inquiry.

### **Scope of any leave granted**

13. Leave to appear may be sought and/or granted on a conditional or unconditional basis. An applicant will be informed whether leave is granted conditionally or unconditionally when the applicant's application for leave to appear is determined.
14. Leave to appear may be conditional when an applicant's direct or special interest is limited to a specific issue or issues which will be the subject of the Commission's inquiry or as otherwise determined by the Commission having regard to the applicant's application for leave.
15. An applicant granted leave to appear:
  - 15.1 may be legally represented at the public hearings without the need for further or separate authorisation, and
  - 15.2 is entitled to appear at, and participate in, the public hearings subject to any conditions on the grant of leave, the Commission's control of the public hearings and to the extent the Commission considers appropriate.
16. Where an applicant is granted leave to appear, the applicant or their legal representative may:
  - 16.1 apply to have evidence tendered or heard
  - 16.2 apply for leave to examine or cross-examine a witness in accordance with any Practice Direction issued by the Commission, and



- 16.3 make submissions about potential findings and recommendations to the Commission following the conclusion of the public hearings.
17. No general, open-ended right to tender evidence, examine or cross-examine will be granted to any applicant.
18. Leave to appear before the Commission may, at any time, be varied or withdrawn by the Commission, or made subject to altered or additional limitations or conditions.

### **Application process**

19. Applications for leave to appear should be made on the attached *Application for Leave to Appear at the Public Hearings* form and should:
  - 19.1 identify the particular subject matter of the inquiry or specific issue or issues that may be the subject of public hearings in relation to which the applicant has a direct or significant interest, and
  - 19.2 be accompanied by a short submission of no more than two pages in support of the application.
20. Applications for leave to appear must be submitted at least seven days prior to the public hearings at which leave to appear is sought.
21. The application and submission may be sent via:
  - 21.1 email to: [lawyers@commissionofinquiry.tas.gov.au](mailto:lawyers@commissionofinquiry.tas.gov.au), or
  - 21.2 post to: **Commission of Inquiry, GPO Box 229, Hobart, TAS 7001.**
22. Applications will generally be determined on the papers with the outcome of the application communicated to the applicant (or the applicant's legal representative). Alternatively, applicants may be notified that they will be required to appear before the Commission on a specified date for their application to be considered.



## APPLICATION FOR LEAVE TO APPEAR AT THE PUBLIC HEARINGS

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Name of person or organisation  
seeking leave to appear (**Applicant**)

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Name of lawyer/law firm (if any)

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Name(s) of Counsel (if any)

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Contact person(s) and details

Name

Address

Telephone number(s)

Email address

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Please **attach** a short submission of no more than two pages addressing the following matters:

- whether the applicant has a direct or special interest in the subject matter of the inquiry
- the likelihood that the Commission may make an adverse finding or a finding of misconduct against the applicant
- the ability of the applicant to materially assist the Commission in the inquiry



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- the age, safety and relevant experience of the applicant, and
- whether, and if so how, granting leave to appear to the applicant would materially assist the Commission during the public hearings over and above any written submissions the applicant might make to the Commission.

The application and submission may be sent via:

email to: **lawyers@commissionofinquiry.tas.gov.au**, or

post to: **Commission of Inquiry, GPO Box 229, Hobart, TAS 7001.**