



PRACTICE GUIDELINE 1

INTRODUCTION

1. This Practice Guideline should be read in conjunction with the *Royal Commissions Act 1902* (Cth) and the relevant State Acts. Further Practice Guidelines will be issued concerning systems, policy, recommendations and other matters.
2. This Practice Guideline and subsequent Practice Guidelines may be varied from time to time.

TELLING YOUR STORY

3. People and organisations on their behalf who wish to tell the Royal Commission of their experiences of child sexual abuse in an institutional context are invited to register their interest in doing so by
 - a. Telephoning 1800 099 340
 - b. Writing to GPO Box 5283, Sydney NSW 2001
 - c. Emailing contact@childabuseroyalcommission.gov.au
4. People who wish to tell the Royal Commission of what has happened to other people regarding child sexual abuse in an institutional context may register their interest in doing so as set out in paragraph 3.
5. If you telephone the Royal Commission, you can talk to an operator about contact details for organisations which can provide support to survivors of child sexual abuse.
6. If you are in a situation where you may be at risk of harm you should notify the operator who will contact the appropriate authorities.
7. If you telephone the Royal Commission, you will be asked to provide information to help determine the best way for the Royal Commission to hear of your personal experiences. That information will include your contact details, the name and location of the institution and when the event occurred.

8. Please tell us whether you have any preferences for how your story is heard by the Royal Commission. You may want to provide a written statement or talk to a Commissioner or Commission officer. You may want to talk privately or publicly. You may want to talk in groups with people you know who have had similar experiences.
9. If you have any other concerns about telling your story you should tell us.
10. If you are a child and need assistance to tell your story, please tell us.
11. If you are Aboriginal or a Torres Strait Islander and need assistance to tell your story, please tell us.
12. If you or a person you are assisting has a disability, which may affect you or them telling the story, please tell us.
13. If you are in a juvenile justice detention centre, correctional centre or other secure residential facility, please tell us so appropriate arrangements can be made to hear your story.
14. If you are writing to the Royal Commission, it will be helpful if you provide the information which is set out in a document called "Practice Guideline 3: Guide questions for providing a statement or information to the Royal Commission". That document can be found on our website.
15. If you have told your story to another Inquiry and wish the Royal Commission to receive the account you made to that Inquiry - that can be arranged.

Legal advice

16. A free legal advice service independent of the Royal Commission called knowmore has been established to provide legal advice and information to people about the Royal Commission. Most people do not need legal assistance, however, if you believe you may need it, knowmore can be contacted on 1800 605 762.
17. The service provides advice on options for providing information to the Royal Commission, assistance with preparing submissions, as well as advice on a range of legal issues including
 - a. witness protections
 - b. the availability of other forms of action or redress

c. the effect of confidentiality agreements in past proceedings.

18. The service does not represent people appearing before the Commission but can offer referral advice.

19. Further details can be found at knowmore's website <http://knowmore.org.au/>.

Witness expenses

20. The Attorney-General's Department is administering a scheme of assistance for certain witnesses called to, or people given leave to appear at, a hearing of the Royal Commission. There are two kinds of assistance available

a. a legal financial assistance scheme

b. payment of witness expenses.

21. Legal financial assistance will cover the reasonable costs of legal representation and disbursements (such as fees for photocopying, obtaining records or reports) to people providing evidence to the Royal Commission.

22. Individual witnesses will also be eligible for payment of expenses incurred to attend a hearing of the Royal Commission.

23. More information about legal financial assistance and witness expenses can be found at the website of the Attorney-General's Department at:
<https://www.ag.gov.au/LegalSystem/Legalaidprogrammes/Commonwealthlegalfinancialassistance/Pages/AssistanceForPeopleEngagingWithTheRoyalCommissionIntoInstitutionalResponsesToChildSexualAbuse.aspx>

What happens after you have registered an interest

24. After you have registered an interest in telling the Royal Commission of your experiences, the information you provide will be considered. During this process, you will be called by a Commission officer to obtain more information.

How the Royal Commission will hear or receive your story

In writing

25. If you want to provide a letter or a statement setting out your story, Commission staff can help you prepare it or you can obtain assistance from your support or advocacy group. After the Royal Commission has received your letter or statement and if we need more information we will contact you. We can accept your experiences via email or via mail.
26. The information you provide will not be evidence before the Royal Commission. It will assist the Royal Commission in the conduct of its inquiry. However the Royal Commission will not make findings in respect of the truth of the information you provide unless it has also been the subject of a later hearing.

By telephone

27. If you want to tell your story to a Commission officer, over the telephone, you can do so.
28. The information you provide will not be evidence before the Royal Commission. It will assist the Royal Commission in the conduct of its inquiry. However the Royal Commission will not make findings in respect of the truth of the information you provide unless it has also been the subject of a later hearing.

Private sessions and use of information given in private sessions

29. You can ask for a private session which will usually be with one Commissioner. A private session will allow you to share your experience in a less formal setting than a hearing. If you want a support person to be present with you, you will be able to do so. You will be given about an hour to tell your story. You should organise your thoughts to make sure you can provide us with the most relevant details of your experience, within the time available. It is expected that many people will want to tell their story and we have set the time so that we can hear from as many people as possible.
30. The Commissioner will decide who can be present at a private session. Usually that will be, apart from you, a support person(s) of your choice and an officer of the Royal Commission. A legal representative may be present as a support person but not as an advocate, unless agreed by the Royal Commission. Representatives of the institution or person you may complain about will not be present.

31. A person with a disability which affects their ability to tell their story, may have a support person or advocate to present on their behalf. If a person has a disability and has any particular needs, they should tell us before attending the private session.
32. A private session can also be held with a group of people who wish to tell of their experiences together.
33. You will be asked questions by the Commissioner or Commission officer in a private session but you will not be cross examined. The questions asked and your answers will help the Royal Commission understand the circumstances of your experiences.
34. In your private session it is important for you to know that when hearing your story it is not the role of the Royal Commission to judge you or your story.
35. The Commissioner can receive documents from you during a private session. However, you will not be required to provide any documents at a private session. Any documents provided will be copied and the originals returned to you. If it is not a public document, it will not be disclosed without your consent, subject to what is said below about providing information to law enforcement agencies.
36. You will not be asked to take an oath or affirmation to tell the truth at a private session, although you should tell the truth. The information you provide will not be evidence before the Royal Commission and a private session is not a hearing of the Royal Commission. It will assist the Royal Commission in the conduct of its inquiry. However, the Royal Commission will not make findings in respect of the information you provide unless it has also been the subject of a later hearing.
37. You should also know that it is an offence to intentionally give information to the Royal Commission in a private session that a person knows to be false or misleading about a matter which is material to the inquiry being made by the Royal Commission.
38. Statements or disclosures made or documents handed over by you in a private session cannot be used in evidence against you in civil or criminal proceedings. This protection is also available to any support persons the Commissioner agrees can attend a private session with you and who make a statement or provide documents in a private session.

39. All private sessions will be recorded by the Royal Commission and a transcript may be made of what was said to assist the Royal Commission. On request, you may be given access to view the transcript of what is recorded. Transcripts will not be given to people who have attended a private session because of the confidentiality requirements in the legislation.
40. The information you provide will be kept confidential unless
 - a. you agree to it being made public through a later hearing or
 - b. the Royal Commission provides it to a law enforcement body (discussed below).
41. The Royal Commission can communicate information provided to it to law enforcement bodies. This could include information you provide in private sessions. The Royal Commission will ask you to agree to information you have provided being given to law enforcement bodies. The Royal Commission will only disclose information you provide to a law enforcement body, without first discussing the matter with you, if the Chair of the Royal Commission believes that it is necessary to prevent harm to any person. A list of the bodies the Royal Commission can communicate information to is set out in s.6P of the *Royal Commissions Act 1902* (Cth).
42. It is an offence for a person to disclose information obtained at a private session. However, a person who gives information at a private session or who is authorised by such a person, can disclose it. This means that the story told by a person at a private session can be told by that person after the private session. The protections that apply to a person giving information to a private session do not apply to giving the same information outside of a private session. There are also exceptions to this concerning internal use by the Royal Commission.
43. People giving information in a private session cannot be disadvantaged or prejudiced, including in their employment, because of having given that information.
44. The Royal Commission is travelling around Australia conducting private sessions and expects to listen to people in all capital cities and many regional areas. The Royal Commission will try to accommodate everyone's preferences for how and where a private session is held, but that may not always be possible. The Royal Commission will work closely with and consult relevant organisations when proposing to attend remote areas, including Indigenous communities.

45. If information provided during a private session is to form part of the evidence before the Royal Commission, and is to be relied on when considering what findings are made, a more formal hearing is necessary. That hearing is designed for the purpose of further investigation, to test matters that have been raised and to allow the Royal Commission to inform itself on relevant matters and issues that may be the subject of findings or recommendations. The Royal Commission is not a court and cannot make decisions about criminal matters.
46. This type of hearing may be held in public or private.
47. In such a hearing, you will need to swear or affirm that what you have said is the truth. At that time or subsequently, and subject to the control of the Royal Commission, the person or institution against whom you have made allegations will be given the opportunity to ask questions of you. They will have the opportunity to give their own account of the relevant events, to have other evidence considered and to make submissions about the findings the Royal Commission should make about your allegations.
48. Survivors of child sexual abuse will only be asked to give evidence at a public or private hearing if they agree to do so.
49. Special arrangements can be made for the giving of evidence by witnesses where it is necessary to remove any contact with any alleged perpetrator or to reasonably meet any special needs or considerations. Special arrangements can also be made for children and young people giving evidence.

LEAVE TO APPEAR

50. Hearings enable the Royal Commission to undertake Case Studies concerning a particular institution or institutions and/or policy and other systemic issues.
51. As the Royal Commission determines its program of public hearings, these will be published on its website and in the media. Details of upcoming public hearings will include the scope and purpose of those public hearings.
52. At the time that the scope and purpose of a hearing is published, the Royal Commission invites written applications for leave to appear from individuals and institutions who

believe they have a direct or substantial interest in the scope and purpose of a particular public hearing.

53. Leave to appear will generally be granted when an applicant:
 - a. has been summoned to give evidence
 - b. is an institution, or is a representative of an institution, that is subject to the inquiry to be undertaken
 - c. may be the subject of an adverse allegation.

54. It is not essential for a person who will appear as a witness in a hearing to apply for leave to appear – witnesses may appear and give evidence without applying for leave.

55. Leave to appear entitles the person or institution to whom it is granted to participate in the public hearing concerning the Case Study, subject to the Royal Commission’s control and to such extent as the Royal Commission considers appropriate. A grant of leave to appear allows a party, or its legal representatives, to:
 - a. ask questions of witnesses
 - b. apply to have evidence tendered or heard
 - c. make submissions about the findings available to the Royal Commission following the public hearing.

56. Applications for leave to appear should be made on the form attached to this Practice Guideline entitled “Application for Leave to Appear at the Royal Commission”. This form should be accompanied by a short submission setting out the basis on which it is said the applicant has a substantial or direct interest in appearing. The form and the submission should be lodged with the Royal Commission by emailing it to solicitor@childabuseroyalcommission.gov.au by the date required.

57. Applications for leave to appear will be determined in advance of each hearing and advice of the outcome of the application will be communicated to applicants.

58. It will be unlikely that the Royal Commission will grant any person or institution unconditional leave to appear. It is anticipated that most grants of leave will be

confined to the hearing of the Case Study in which the person or institution has a direct or substantial interest and subject to conditions, such as

- a. Limiting the particular topics or issues upon which the person may examine or cross-examine
- b. Time limits upon examination and cross-examination.

59. If any person who has been granted leave to appear wishes to raise a procedural or legal matter, or wishes to make a submission about the determination of their application for leave, they should communicate with the Solicitor Assisting the Royal Commission in writing, identifying the issue and a brief outline of the submission to be made.
60. The Royal Commission may withdraw leave to appear or make leave subject to altered or additional conditions, at any time.

CONDUCT OF PUBLIC AND PRIVATE HEARINGS

Witnesses generally

61. Subject to the control of the Chair or presiding Commissioner, counsel assisting the Royal Commission will determine which witnesses are called and the order in which those witnesses are called and examined. It may be necessary to call some witnesses to give evidence on more than one occasion.
62. The Royal Commission may decide to receive the evidence of a witness orally or by written statement. The Royal Commission will decide whether to require a witness giving evidence by statement to attend for examination or cross-examination. The Royal Commission may allow special arrangements for the giving of evidence to protect the well being of the witness or respond to any reasonable need arising from a disability or other special circumstance.
63. Persons required to give evidence will be provided with a summons to attend and appropriate notice of the time the Royal Commission will call upon the summons to attend and give evidence. Witnesses with a particular period when they are not available should give notice to the Solicitor Assisting the Royal Commission at the earliest opportunity.
64. All witnesses will be called to give evidence by counsel assisting, and then examined by counsel assisting. In some circumstances, the witnesses might be examined by more than one of the counsel assisting the Royal Commission. The witness may then be examined by or on behalf of any person granted leave who is considered by the Royal Commission to have sufficient interest to do so. The witness may then be examined by his or her own legal representative. Counsel assisting may re-examine. Duplication and repetition must be avoided.
65. In determining whether a person has sufficient interest to examine a witness, the Royal Commission may call upon the examiner to
 - a. identify the purpose of the examination
 - b. set out the issues to be canvassed
 - c. state whether a contrary affirmative case is to be made, and if so the details of that case including providing a signed statement of evidence advancing material contrary to the evidence of that witness.

66. The Royal Commission may
 - a. limit the particular topics or issues upon which a party can examine
 - b. impose time limits upon examination.
67. Any person wishing to have evidence of a witness or witnesses placed before a hearing must notify the Solicitor Assisting the Royal Commission in a reasonable time in advance of the name of the witness, and provide a signed statement containing their expected evidence. Royal Commission staff may assist in the preparation of that statement or interview the witness, and take further statements if necessary. Counsel assisting will decide whether or not to call the witness. An application may be made directly to the Chair or presiding Commissioner to call the witness only after the above procedure has been completed, and counsel assisting has refused to call the witness.
68. A copy of any document proposed to be put to a witness must be provided to counsel assisting as soon as possible after a decision is made to use the document and in all cases prior to its intended use.
69. Except as set out below, the Royal Commission will not apply the rule in *Browne v Dunn*.
 - a. If the Royal Commission is to be invited to disbelieve a witness, the material grounds upon which it is said that the evidence should be disbelieved should be put to the witness so that the witness may have an opportunity to offer an explanation.
 - b. The Royal Commission expects that, where it is contended that deliberately false evidence has been given, or that there has been a mistake on the part of the witness on a significant issue, the grounds of such contention will be put.
 - c. What is stated above is not intended to mean that
 - i. mere inconsistencies and unimportant differences in the evidence should be raised
 - ii. once the grounds for disbelieving a witness have been put by one party, other parties need to put them again.
70. 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 that the proposed examination differs to a significant degree from the examination that has taken place.

71. The Royal Commission will determine the order in which persons authorised to examine a witness may examine that witness. The order will generally be determined by the degree of interest the person has in the evidence of the witness.

Anticipated adverse evidence

72. Where the Royal Commission has documents, information or evidence that it is anticipated will be tendered or given in a public hearing and there is a risk of damage to the reputation of a person or institution arising from that public exposure, the Royal Commission will, depending on the particular circumstances, generally adopt the following procedure.

- a. The person or a representative of the institution will be provided with the opportunity of being interviewed by Commission officers before the public hearing. The circumstances in which the interview will be conducted will be provided in advance.
- b. As far as possible, the person or institution will be given advance notice of the names of the witnesses who might give evidence which could be adverse to them and a summary of that anticipated evidence, or a signed statement containing that anticipated evidence.
- c. Paragraph 64 of this Practice Guideline applies in relation to the evidence of other witnesses.
- d. Leave will be granted for the person or institution to be legally represented at the public hearing.
- e. After being examined by counsel assisting, and subject to the overall control of the Chair or presiding Commissioner, the person or institution will be entitled to be examined by their own lawyer, and to apply for any other material evidence to be tendered or witnesses to be called.

Use of information obtained in a private session in a public or private hearing

73. Information obtained in a private session (but not a private hearing) is not evidence before the Royal Commission and a private session is not a hearing of the Royal Commission. Under the *Royal Commissions Act 1902* (Cth), the Royal Commission can only report information obtained in a private session in respect of a natural person, if it is de-identified. That means that any information which identifies the person giving

the information or the person about whom information is given cannot be part of a report.

74. Information obtained in a private session which contains allegations against a person or institution will generally only be relied on by the Royal Commission when considering what findings are to be made, and included in any report of the Royal Commission after the following has occurred
- a. the person providing the information has sworn or affirmed its truth
 - b. the person and/or institution against whom allegations have been made has, subject to the overall control of the Royal Commission, been given an opportunity to
 - i. ask questions of the person making the allegations
 - ii. give their own account
 - iii. apply to have other evidence tendered or heard, and to the extent allowed by the Royal Commission, that evidence has been tendered or heard, and
 - iv. make submissions about the findings the Royal Commission should make about the allegations.
75. This process may happen in public or in private at the discretion of the Royal Commission.

Documents which may be tendered in hearings

76. Subject to the control of the Chair or presiding Commissioner, counsel assisting will determine which documents are tendered, and the time at which they will be tendered.
77. Before commencement of the public hearing, each person or institution authorised to appear at that hearing may be given confidential electronic access to certain documents likely to be tendered as exhibits in the public hearing.
78. One of the purposes of providing this access is to enable persons or institutions to identify whether any application should be made for a suppression order in relation to any document or any part of a document.
79. Copies of these documents will not otherwise be provided to any person or institution. Generally, they will be subject to a direction made by the Chair or presiding Commissioner that they not be published until the point at which they are tendered.

Additional documents may be tendered by counsel assisting during the course of the public hearing. Where such additional documents are tendered, the Royal Commission will provide a person or institution with a copy of the relevant document where the person or institution has a significant interest in the issues to which each document relates.

80. Any person or institution wishing to have a document placed before a public hearing must notify the Solicitor Assisting the Royal Commission by providing a copy of the document to the Royal Commission 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 Chair or presiding Commissioner to tender a document only after this procedure has been completed, and counsel assisting has refused to tender the document.

Current proceedings

81. The Letters Patent refer to the need to ensure that evidence that may be received by the Royal Commission that identifies particular individuals as having been involved in child sexual abuse or related matters is dealt with in a way that does not prejudice current or future criminal or civil proceedings or other contemporaneous inquiries.

NON PUBLICATION DIRECTIONS

82. The Royal Commission has powers under the *Royal Commissions Act 1902* (Cth) and most of the relevant State Acts to direct that any evidence given before it not be published. The Commonwealth Act provides that the Royal 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 Royal Commission to be identified, not be published except as specified. The Commonwealth Act acknowledges a Royal Commission's general powers to take evidence in private.
83. The Royal Commission will implement procedures to ensure that confidentiality is maintained where the Royal Commission believes that it is necessary. Any person who feels a particular concern in this area is encouraged to contact the Solicitor Assisting the Royal Commission.
84. In determining whether to make a non-publication direction, the Royal 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 among 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
- d. any risk of undue prejudice to a person's reputation.

85. Any person granted confidential electronic access to documents or otherwise given access to documents which are proposed to be tendered at a public hearing, should notify the Solicitor Assisting the Royal Commission of any application for a non-publication direction in relation to any document or part of a document. Such notification is to be in writing and must be made within seven days of the access being given. 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.
86. The Chair or presiding Commissioner will determine whether or not to hear oral submissions in support of such written applications.
87. Those making written applications for non-publication directions will be advised of the decision once the applications have been determined by the Chair or presiding Commissioner.

PUBLICATION AND ACCESS TO EVIDENCE

88. 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 Royal Commission's website as soon as they are available.
 - b. The evidence of any witness before the Royal Commission in a public or private hearing may be published by the Royal Commission unless a direction is made prohibiting the publication of particular evidence.
 - c. Any person (or the legal representative of that person) having leave to appear before the Royal Commission will have access to any book, document or writing tendered in evidence for the purpose only of appearance before the

Royal Commission and subject to any other direction made by the Chair or presiding Commissioner.

- d. For the purpose of and to the extent necessary for the public reporting of the proceedings of the Royal 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 tendered 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 Royal 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.

89. The Royal Commission has developed Media Guidelines for Public Hearings. Members of the media should refer to these guidelines for further information on publication and access to evidence.
90. Any application for access should be made in writing, in the first instance, to the Solicitor Assisting the Royal Commission.

STANDARD OF PROOF

91. In reaching findings, the Royal Commission will apply the civil standard of proof which requires its “reasonable satisfaction” as to the particular fact in question in accordance with the principles discussed by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336

“...it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent likelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal...the

nature of the issue necessarily affects the process by which reasonable satisfaction is attained.”

92. In other words, the more serious the allegation, the higher the degree of probability that is required before the Royal Commission can be reasonably satisfied as to the truth of that allegation.

LIAISON WITH THE ROYAL COMMISSION

93. All contact with the Commission made necessary by these directions, or other enquiries in respect of the conduct of the public inquiry, should be made through the the Solicitor Assisting the Royal Commission at solicitor@childabuseroyalcommission.gov.au.