



PRACTICE DIRECTION 5 CONDUCT OF PUBLIC HEARINGS

11 May 2021

- 1 This Practice Direction is issued under section 16 of the *Inquiries Act 2014* (Vic) (**Act**) and sets out the procedural guidelines for public hearings to be conducted by the Royal Commission into the Suitability of Crown Melbourne Limited to hold a Casino Licence (**Royal Commission**).
- 2 This Practice Direction should be read in conjunction with the Act and the Letters Patent establishing the Royal Commission, including the Terms of Reference.
- 3 This Practice Direction, and any other practice directions published by the Royal Commission may be varied or replaced from time to time. The Royal Commission may, at any time, depart from this Practice Direction if it considers it appropriate to do so, subject to the Act and the Letters Patent.

DATES, TIMES AND LOCATION OF PUBLIC HEARINGS

- 4 The Royal Commission will conduct evidentiary public hearings on dates to be fixed. Notice of hearings will be published on the Royal Commission's website <https://www.rccol.vic.gov.au/>.
- 5 Public hearings will be conducted in Hearing Room 1 at the Fair Work Commission, Level 6, 11 Exhibition Street, Melbourne.
- 6 The Royal Commission will publish its program of public hearings on its website. This may include details of forthcoming public hearings such as witnesses being called to give evidence and topics that evidence will address.
- 7 The usual hearing hours will be from 10:00am to 1:15pm and 2:00pm to 4:00pm unless the Royal Commission determines otherwise.
- 8 The Royal Commission proposes to conduct as many hearings as it can in person.
- 9 Where the Royal Commission considers it necessary or appropriate to do so, hearings will be conducted online, using remote access technology.
- 10 Unless the Royal Commission makes a direction to the contrary:
 - (a) public hearings will be livestreamed on the Royal Commission's website, subject to a 15 minute delay;
 - (b) the transcripts of each public hearing will be placed on the Royal Commission's website as soon as possible after the conclusion of each hearing day;
 - (c) witness statements will be placed on the Royal Commission's website as soon as possible after the witnesses have completed their evidence; and
 - (d) documents which have been tendered will be placed as exhibits on the Royal Commission's website as soon as practicable after the documents have been tendered into evidence.



COVID-SAFE HEARINGS

- 11 Subject to any public health directions made under the *Public Health and Wellbeing Act 2008* (Vic), and the need to ensure appropriate physical distancing, only the following persons will be permitted to be physically present at the public hearings:
- (a) designated officers of the Royal Commission;
 - (b) witnesses and their legal representative or a support person if the witness does not have a legal representative;
 - (c) parties granted leave to appear and their legal representatives; and
 - (d) subject to paragraph 14 below, authorised media representatives.
- 12 The number of persons who will be permitted to be physically presented in the hearing room is limited and will be monitored by the Royal Commission to ensure appropriate physical distancing is maintained.
- 13 Subject to any public health directions made under the *Public Health and Wellbeing Act 2008* (Vic), face masks are not required to be worn indoors at the Royal Commission premises unless individuals cannot maintain social distancing.
- 14 The Royal Commission will make available a separate room at the Royal Commission premises from which authorised media representatives will be able to view the hearings via a live-stream. If there is sufficient space, authorised media representatives may also be allowed access to the hearing room during the public hearings.

WITNESSES

- 15 Subject to the control of the Royal Commission, Counsel Assisting and/or Solicitors Assisting will:
- (a) identify, contact and call each individual whom they wish to give evidence as a witness before the Royal Commission;
 - (b) identify the topics and/or questions to be addressed in the witness statement;
 - (c) determine whether a witness for whom a witness statement has been prepared will be called to give evidence at a hearing;
 - (d) determine the order in which witnesses are called; and
 - (e) determine which documents are tendered.
- 16 The Royal Commission may:
- (a) require production of a completed witness statement by issuing a notice to produce;
 - (b) receive the evidence of a witness orally, by written statement or both;
 - (c) request persons to give evidence, or may serve persons required to give evidence with a notice to attend to give evidence;
 - (d) require witnesses to give evidence concurrently with other witnesses; and/or



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- (e) require witnesses called in public hearings to give evidence by way of both written witness statement and oral evidence.
- 17 Proposed witnesses who are not legally represented may be assisted by Counsel Assisting and/or Solicitors Assisting to prepare their witness statement.
- 18 Proposed witnesses who are legally represented:
- (a) must prepare their witness statement themselves, although are permitted to seek legal advice and assistance from their legal representative; and
 - (b) must follow the order of, and address each of the topics and/or questions in the witness statement.
- 19 Witnesses must give evidence on oath or affirmation unless directed otherwise.
- 20 All persons required by the Royal Commission to give evidence will be served with a notice under section 17 of the Act requiring their attendance to give evidence.

EXAMINATION AND CROSS-EXAMINATION OF WITNESSES AT PUBLIC HEARINGS

Examination

- 21 Subject to any contrary determination of the Royal Commission, the procedure for examination and cross-examination is:
- (a) where the witness has prepared a witness statement, the witness will adopt that witness statement as their evidence in chief, and vary or supplement it, if necessary, before it is tendered;
 - (b) where the witness has not prepared a witness statement and is legally represented, their legal representative will lead evidence in chief from that witness;
 - (c) Counsel Assisting will question the witness;
 - (d) persons with leave to appear may, if granted leave, cross-examine the witness. The process for seeking leave to cross-examine is set out in 22 to 25 below;
 - (e) the legal representative for the witness may then re-examine the witness;
 - (f) Counsel Assisting may then re-examine the witness; and
 - (g) any leave granted to the legal representative of a witness to examine their client will be confined to matters not already in evidence.

Cross examination

- 22 Examination or cross-examination of witnesses by any other party will be by leave only. Open ended leave will not be given.
- 23 To assist the Royal Commission to determine whether a person has sufficient interest to cross-examine a witness, the cross-examiner must make an oral or written application which addresses:



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- (a) the purpose of the cross-examination;
- (b) the issues to be canvassed;
- (c) the proposed duration; and
- (d) the document identification numbers of any documents to which they propose to take the witness.

24 Leave to cross-examine will only be granted to the extent it will assist the Royal Commission to investigate and report on the subject matter of the terms of reference.

25 Where leave is granted:

- (a) it may specify the issue or issues about which questions can be asked;
- (b) questioning must be limited to matters within the terms of reference of the Royal Commission;
- (c) questioning that repeats matters already raised by Counsel Assisting will not be permitted;
- (d) where persons represented before the Royal Commission have a common or similar interest in the evidence of a particular witness, the representatives should consult with each other and with Counsel Assisting before the witness is called to attempt to reach agreement about the order and general areas or subjects of cross-examination;
- (e) revisiting issues covered by earlier questioning by parties with a common interest will not be permitted;
- (f) in default of agreement between parties with a common interest, the Royal Commission will direct the order of questioning.

TENDERING DOCUMENTS OTHER THAN WITNESS STATEMENTS

26 Counsel Assisting will determine which and when documents are tendered, subject to the Royal Commission's control.

27 Before the commencement of a public hearing, each person granted leave to appear may be given confidential access to documents that are likely to be tendered as exhibits at the public hearing.

28 The purpose for which confidential access is granted may be to enable a person to identify whether any application should be made for a restricted publication order in relation to a document or any part of a document.

29 Notice of any application for a restricted publication order must be given to the Solicitors Assisting the Royal Commission as soon as possible once the basis for the application is identified. Unless the proposed tender is less than 24 hours, the application must be:

- (a) made in writing prior to the date on which the documents are to be tendered; and



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- (b) accompanied by a short written submission (no longer than five pages) setting out the basis upon which each claim is made, having regard to the matters identified in section 26 of the Act.

- 30 Where notice of the proposed tender is less than 24 hours, any application for a restricted publication order may be made orally during the course of a hearing.
- 31 Additional documents may be tendered by Counsel Assisting during the course of a hearing. Copies of any such documents will ordinarily be provided to persons granted leave to appear.
- 32 If a person who has been granted leave to appear seeks to have a document placed before a hearing or tendered at a hearing:
- (a) they must notify Solicitors Assisting that they wish to have the document placed before the public hearing by providing a copy of the document to Solicitors Assisting within a reasonable time before the hearing;
 - (b) the Royal Commission may require the production of other documents; and
 - (c) Counsel Assisting will decide whether or not the documents are to be tendered.
- 33 An application to tender a document may be made directly to the Royal Commission if the process described in paragraph 32 has been completed and Counsel Assisting has refused to tender a document.

HEARING BOOK

Access

- 34 The Royal Commission's online Hearing Book (**Hearing Book**) will be accessible to parties with Leave to Appear. Parties will be sent an invitation to access the hearing book in due course.
- 35 Access to the Hearing Book is expressly subject to an undertaking given by the accessing party that information contained in the Hearing Book will not be published or otherwise disclosed unless and until it has been tendered at a public hearing of the Royal Commission or otherwise made publicly available by the Royal Commission.
- 36 The Royal Commission's staff, including Solicitors Assisting and Counsel Assisting the Royal Commission, will determine which materials provided to the Royal Commission will be uploaded to the Hearing Book.
- 37 As a general guide, the Hearing Book will contain:
- (a) witness statements and their attachments;
 - (b) other documents identified as being relevant to the evidence of witnesses;
 - (c) exhibits; and
 - (d) transcripts of public hearings.
- 38 The Hearing Book folders are structured as follows:
[Hearing dates to which evidence relates]



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01. Leave to Appear folder
 - [Name of witness to whom evidence relates]
 - a. Statement
 - b. Exhibits
 - c. Documents Relevant to Witness
 - Other relevant documents
02. Produced for Tendering folder
 - [Name of witness to whom evidence relates]
 - a. Statement
 - b. Exhibits
 - c. Documents Relevant to Witness
 - Other relevant documents.
03. Tendered Exhibits folder
04. Finalised Transcripts folder

HEARING BOOK PROCESS

Uploading of documents to the hearing book

- 39 Documents will be uploaded by the Royal Commission's staff to the Hearing Book as follows:
- (a) As soon as practicable following the receipt of statements and their exhibits/attachments that are proposed to be tendered, and upon identification of any other documents relevant to witnesses, but following the resolution of any claims of 'reasonable excuse' or confidentiality over the documents, or parts of documents;
 - (b) Where a party seeks any redaction to a document contained in the Hearing Book prior to it being tendered, that party is required to provide a highlighted and redacted copy or copies of the document to Solicitors Assisting as soon as possible, but at least 48 hours prior to the hearing at which the documents are proposed to be tendered;
 - (c) Royal Commission staff will endeavour to transfer documents from the Leave to Appear folder to the 'Produced for Tendering' folder at least 24 hours prior to the hearing to which those documents relate.

Documents subject to a 'reasonable excuse' claim

- 40 Any documents subject to a 'reasonable excuse' claim pursuant to sections 18, 33 or 34 of the Act will not be uploaded to the Online Hearing Book until those claims have been determined in accordance with Practice Note 3 (Production of Documents and Document Management Protocol).



Documents subject to a restricted publication claim

- 41 Documents containing information subject to an undetermined restricted publication claim will be uploaded to the Leave to Appear folder along with any documents that are not subject to claims.
- 42 Where redacted copies of documents subject to an application for a restricted publication order are not provided to the Royal Commission at the time the documents are produced, unredacted copies of those documents will be uploaded to the Leave to Appear folder.
- 43 Where redacted copies of documents subject to a claim for a restricted publication are provided to the Royal Commission, those documents will be uploaded to the Leave to Appear folder in both a redacted and unredacted form while such claims are resolved.
- 44 Documents subject to an undetermined restricted publication claim and uploaded to the Leave to Appear folder will be made available only to the party which produced the document to the Commission.

Publication of tendered documents on the Commission's website

- 45 Once witness statements are tendered, they will be published on the Royal Commission's website as soon as practicable.
- 46 Once documents other than witness statements are tendered, they will be placed in the 'Tendered Exhibits' folder of the Hearing Book. Should any further redactions to the documents be sought, the party seeking the further redactions must provide the Royal Commission with both highlighted and redacted copies of the documents as soon as possible, but no more than 2 business days after being uploaded to the 'Tendered Exhibits' folder.
- 47 Documents contained in the 'Tendered Exhibits' folder will be published on the Royal Commission's website in due course.
- 48 Documents contained in the 'Produced for Tendering' folder may be publicly displayed during the Royal Commission's hearings.

DOCUMENTS AVAILABLE TO WITNESSES

- 49 When giving evidence before the Royal Commission, witnesses will be provided with access (either in electronic or hard-copy format) to all documents contained in the 'Produced for Tendering' folder assigned to their name as soon as practicable.