



Special Commission of Inquiry into Healthcare Funding

PRACTICE GUIDELINE 1

8 November 2023

Conduct of Public Hearings

1. This Practice Guideline relates to the conduct of the Special Commission of Inquiry hearings into Healthcare Funding (**Special Commission**). It should be read in conjunction with the *Special Commissions of Inquiry Act 1983 (NSW) (Act)*, the terms of reference contained in the Letters Patent establishing the Inquiry dated 23 August 2023 and any other Practice Guidelines.
2. This Practice Guideline, and any others that may be issued by the Special Commission, may be varied, withdrawn, or replaced at any time.

A. INTRODUCTION

3. The Special Commission intends to conduct public hearings. Those hearings will enable the Special Commission to inquire into and receive evidence concerning matters falling within the terms of reference.
4. This Practice Guideline addresses the procedures that apply to:
 - a. applications for authorisation to appear at any public hearings of the Special Commission, including by a legal practitioner (Part B); and
 - b. the conduct of public hearings of the Special Commission (Part C).

B. AUTHORISATION TO APPEAR AND LEGAL REPRESENTATION

5. Pursuant to s 12(2) of the Act, authorisation to appear (including by a legal practitioner) may be granted where it is shown to the satisfaction of the Commissioner that an applicant has a direct and substantial interest in the subject of inquiry, or the applicant's conduct in relation to any such matter has been challenged to the person's detriment.



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6. The Special Commission invites written applications for authorisation to appear, including to be represented by a legal practitioner, from people who believe that they have a direct and substantial interest in the scope of a particular public hearing, or in the subject-matter of the inquiry generally. Those applications are to be made and will be dealt with in accordance with paragraphs 11 to 14 of this Practice Direction.
7. Authorisation to appear will generally be granted when an applicant:
 - a. has been summoned to give evidence;
 - b. is the subject of an inquiry to be undertaken; or
 - c. is likely to be the subject of an adverse allegation.
8. Where a person is authorised to appear, and subject to the control of the Commissioner:
 - a. the person is entitled to participate in a public hearing to such extent as the Commissioner considers appropriate; and
 - b. the person, or the person's legal representative, may:
 - i. subject to paragraphs 29 and 33 of this Practice Guidelines, apply to have witnesses called or documents tendered;
 - ii. seek leave to examine/cross-examine a witness; and
 - iii. make submissions about the findings available to the Special Commission.
9. Authorisation to appear may be granted subject to such conditions or limitations as the Commissioner considers appropriate, including by limiting:
 - a. the person's participation to the provision of written submissions;
 - b. the person's participation to particular hearings or issues; or
 - c. the extent of any examination of witnesses that may occur by or on that person's behalf (see further below as to the examination of witnesses).
10. An authorisation to appear may be withdrawn, or made the subject of additional or varied conditions, by the Commissioner at any time.



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Applications for authorisation to appear or to be legally represented

11. Any applications for authorisation to appear or for a witness to be legal represented should be made in the form annexed to this Practice Guideline entitled "*Application for authorisation to appear at a hearing of the Special Commission*". This form should be accompanied by a submission not exceeding one page setting out the basis on which it is said that the applicant has a substantial or direct interest in appearing. The form and accompanying submission should be lodged with the Special Commission by emailing it to contact.hfi@specialcommission.nsw.gov.au.
12. Applications may be determined on the papers in advance of a hearing and the outcome communicated to the applicant. Alternatively, the Commissioner may notify the applicant or the applicant's legal representative that they will be required to appear before the Special Commission on a specified date for consideration of the application.
13. If it is not practicable to determine an application for authorisation to appear in advance of the hearing date, an application may be determined at a hearing.
14. A person may seek authorisation to appear at any time if something has occurred during a public hearing that leads them to believe that they may have a substantial and direct interest in the subject matter of the inquiry.

C. CONDUCT OF PUBLIC HEARINGS

15. The date, time, and venue of any public hearing will be announced on the Special Commission's webpage.
16. Public hearings will sit on weekdays and usual sitting hours will be from 10.00 am to 1.00 pm and from 2.00 pm to 4.00 pm.
17. The date, time and location of a hearing may be varied by the Commissioner at any time.

Witnesses

18. Subject to the control of the Commissioner, Counsel Assisting will determine what witnesses are to be called and the order in which they are to be called.
19. The Special Commission may decide to receive the evidence of a witness orally or by written statement. The Special Commission will decide whether to require a witness giving evidence by written statement to attend for examination or cross-examination.



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20. Persons required to give evidence will be provided with a summons to attend and give evidence and will be given appropriate notice of the time and date they are required to attend.
21. Subject to the control of the Commissioner, the usual procedure for examination of witnesses will be as follows:
- a. Counsel Assisting will call the witness;
 - b. the witness will be invited to take an oath or affirmation;
 - c. Counsel Assisting will examine the witness and may tender the statement of the witness (if any);
 - d. the witness may be cross examined by or on behalf of any person who is considered by the Commissioner to have a sufficient interest to do so;
 - e. the witness may be examined by his or her own legal representative (if any); and
 - f. Counsel Assisting may re-examine the witness.
22. A witness may be examined by more than one of the Counsel Assisting.
23. In determining whether a person has a sufficient interest to cross examine a particular witness (either at all or as to a particular topic), the Commissioner may call upon the person to:
- a. identify the purpose of the proposed cross examination; and
 - b. set out the issues to be canvassed in the cross examination.
24. In granting leave to any person to cross examine a witness, the Commissioner may impose:
- a. limits as to the topics or issues upon which a person may cross examine a witness; and
 - b. time limits upon any cross-examination,
25. During the evidence of any witness, the Commissioner may:
- a. disallow questions posed to witnesses; and
 - b. ask questions of a witness at any time.



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26. Once a witness has been cross examined on a particular issue, no further cross examination on that issue will be permitted unless the person wishing to cross examine the witness on that issue can demonstrate to the satisfaction of the Commissioner that the proposed cross examination differs to a significant degree from the cross examination that has already taken place.
27. Subject to the control of the Commissioner, Counsel Assisting may call a witness to give their evidence concurrently with any other witness or witnesses (including in relation to particular issues or topics).
28. A witness may be called to give evidence at more than one public hearing.
29. Unless otherwise arranged with the Solicitors Assisting the Special Commission, any person wishing to have a particular witness called during a hearing must, a reasonable time prior to when it is proposed that the witness be called:
 - a. notify the Solicitors Assisting the Special Commission of the name and contact details of the proposed witness;
 - b. provide a signed statement containing the evidence that it is expected the proposed witness will give;
 - c. provide electronic copies of any documents that it is proposed to tender through or be shown to the witness during their evidence.
30. Counsel Assisting will decide whether to call the witness. If Counsel Assisting declines to call the witness, an application may then be made to the Commissioner for the witness to give evidence. The fact that an application has not been made in accordance with paragraph 29 above will not necessarily result in the refusal of the application if the Commissioner is otherwise satisfied that it is appropriate for the witness or witnesses to be called to give evidence.

Tendering documents

31. Subject to the control of the Commissioner, Counsel Assisting will determine what documents are to be tendered, and the time at which they will be tendered.



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32. Before the commencement of a public hearing each person granted leave to appear at that hearing may, where it is practicable to do so and at the discretion of the Solicitors Assisting or Counsel Assisting the Special Commission, be given confidential electronic access to certain documents likely to be tendered as exhibits in the public hearing.
33. Any person wishing to have a document tendered to the Special Commission must:
 - a. notify the Solicitors Assisting the Special Commission of that request;
 - b. identify the issue or issues to which the document relates; and
 - c. provide an electronic copy of the document(s) sought to be tendered.
34. Upon reviewing any request made in accordance with paragraph 33 above, the Special Commission may request the production of additional documents from the applicant.
35. Counsel Assisting will decide whether the document is to be tendered. If Counsel Assisting has declined to tender a document, an application may be made to the Commissioner for the document to be tendered. The fact that an application has not been made in accordance with paragraph 33 above will not necessarily result in the refusal of the application to tender a document to the Special Commission if the Commissioner is otherwise satisfied that it is appropriate for that document to be tendered.

Private hearings and non-publication orders

36. In an appropriate case, the Commissioner may:
 - a. direct that a public hearing, or any part of a public hearing, take place in private and give directions as to the persons who may be present during such part of the hearing to be held in private; and
 - b. give directions preventing or restricting the publication of evidence given before the Special Commission or of matters contained in documents tendered to the Special Commission.



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37. Any person summoned to give evidence or who has been granted leave to appear who seeks a direction for a private hearing for particular evidence, or a direction for non-publication of particular evidence must (as soon as is reasonably practicable in advance of the hearing) provide Counsel Assisting or the Solicitors Assisting the Special Commission with a copy of the proposed direction sought, an outline of the proposed evidence and any submissions in support of the application.

Addresses and submissions

38. At the conclusion of the evidence the Commissioner will make directions concerning final submissions, including as to:

- a. the form such submissions are to take - i.e., orally, in writing, or a combination of both;
- b. who may make such submissions, and on what issues;
- c. the time at which submissions are to be made and in what order.

Contact with the Special Commission

39. All contact with the Special Commission made necessary by this or any other Practice Guideline, or any other inquiries in respect of the Commission, should be made through the Solicitor Assisting by email at contact.hfi@specialcommission.nsw.gov.au.

8 November 2023

Richard Beasley SC
Commissioner
Special Commission of Inquiry into Healthcare Funding