

PRACTICE GUIDELINES – 01/2015

Contacting the Commission, Leave to Appear, Witness Statements, Confidentiality & Other Matters

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Part A. Introduction

1. The Barrett Adolescent Centre Commission of Inquiry (the Commission) was established by Order in Council made under the *Commissions of Inquiry Act 1950* (the Act). Its Terms of Reference are available on the Commission's website: www.barrettinquiry.qld.gov.au.
2. This document contains general practice guidelines relating to the conduct of the Inquiry. The Commissioner may dispense with compliance with these guidelines, or vary them, as she considers appropriate in particular circumstances. Further guidelines may be published on the Commission's website from time to time.
3. Any person with information relevant to the Terms of Reference, whether confidential or otherwise, should not hesitate to contact the Commission's Executive Director, Ashley Hill, to discuss the provision of that information to the Commission:
 - (a) by email – info@barrettinquiry.qld.gov.au; or
 - (b) by telephone – (07) 3239 6040.
4. The Commission will hold an initial public sitting on Wednesday 30 September 2015 at 9.30 am in courtroom 34 in the Brisbane Magistrates Court building at 363 George Street, Brisbane, when it is anticipated that:
 - (a) the Commissioner will make general introductory remarks concerning the nature and scope of the Inquiry;
 - (b) applications for leave to appear or to be legally represented at the future public sittings of the Commission will be heard; and
 - (c) further information as to the conduct of the Inquiry, including likely public sitting dates, will be provided.
5. Subject to the Commissioner's discretion to exclude the public or any portion of the public from any of its sittings, the Commission's hearings will be open to the public and live-streamed via its website.
6. All witnesses giving evidence at the public sittings of the Commission will be called and examined by Counsel Assisting the Commission.

Part B. Communicating with the Commission

7. So far as possible without unfairness to any person affected by the work of the Commission, written communications from and to the Commission will occur only by email or, where the Commission provides general notice of procedural matters, via the Commission's website.
8. Any person, agency or organisation communicating with the Commission by email should do so initially via info@barrettinquiry.qld.gov.au. Unless the sender specifies another return email address, the Commission will assume that all communications from it to the sender may be directed to the email address from which the initial communication was received.
9. Unless otherwise specified by the Commission, all witness statements (including attachments) must be provided to the Commission:
 - (a) in hard-copy format, by lodging at the Commission's office at Level 10, 179 North Quay, Brisbane, one copy on A4 paper in type face no smaller than 12 point in Times New Roman font or 11 point in Arial font and in no less than single line spacing; and
 - (b) electronically to mail@barrettinquiry.qld.gov.au in fully text-searchable, multi-page PDF/A format, together with relevant metadata as defined in the document management protocol to be published on the Commission's website.
10. Unless otherwise specified by the Commission, all other information, relevant documents and submissions must be provided to the Commission electronically, in the format specified in paragraph 9(b), by email to mail@barrettinquiry.qld.gov.au or by using the secure form on the Commission's website at www.barrettinquiry.qld.gov.au.
11. The Commission may make exceptions to the requirement for information to be provided electronically in the format specified in paragraph 9(b). Anyone seeking an exception or assistance in meeting this requirement should contact the Executive Director to discuss the way they might provide the information to the Commission. Email: info@barrettinquiry.qld.gov.au or telephone: (07) 3239 6040.
12. The Commission will store and manage electronic documents it receives in a secure online data room. The data room is intended to streamline the Commission's preparation for the public sittings, and to enhance the conduct of those sittings. To facilitate their own preparation, individuals, agencies and organisations may apply to the Executive Director for access to materials they have provided to the Commission which have been placed in the online data room.

Part C. Evidence and Submissions

13. These Guidelines distinguish between documents setting out factual matters within any person's knowledge or belief (that is, evidence) and documents setting out arguments or assertions as to the conclusions the Commission should reach in relation to all or any part of the Terms of Reference (that is, submissions).
14. In this regard, the Commission:
 - (a) actively seeks evidence from all persons who can provide factual information or historical documents relevant to any of the Terms of Reference; but
 - (b) does not invite, and does not propose generally to receive, submissions on any matter relating to the Terms of Reference except as directed during the course of the Inquiry.
15. However, any person (or group of persons) who considers they have particular knowledge of or expertise in the subject matter of the Terms of Reference, enabling them to provide assistance to the Commission by submissions, should seek leave to appear in accordance with Guideline F below.
16. Any person seeking to make written submissions in respect of the subject matter of the Terms of Reference, but not intending to seek leave to appear, should contact the Executive Director by email to info@barrettinquiry.qld.gov.au outlining the subject matter of the proposed submissions and why the Commission should receive them. In due course, the Commission will inform the person whether the proposed submissions will be accepted.

Part D. Summonses

17. On and after 14 September 2015, the Commission will issue summonses pursuant to s 5 of the Act requiring persons to attend to give evidence and/or to produce documents and/or to give information and answer questions. However:
 - (a) the Commission encourages any person with evidence (whether or not contained in documents) or information they believe is or may be relevant to the Terms of Reference to volunteer assistance to the Commission; and
 - (b) any person in this category who wants to avoid the issue or operation of a summons to them should notify the Executive Director immediately so that such a request can be considered by the Commissioner.
18. Unless otherwise directed by the Commissioner, the primary evidence of witnesses before the Commission (whether summonsed or not) is intended to be given in the form of a written statement.

Part E. Witness Statements

19. Witness statements:

- (a) must either be in affidavit form or verified as statutory declarations under the *Oaths Act 1867*;
- (b) must set out comprehensively and so far as possible, in chronological order, the evidence which the witness can give in relation to each aspect of the Terms of Reference;
- (c) must contain only statements of factual matters within the direct knowledge of the witness, unless (d) below applies;
- (d) may contain statements of factual matters of which the witness has been informed, or believes, if the source of the information or the basis for the belief is clearly identified in the witness statement;
- (e) must have exhibited to them (by attachment or accompanying presentation) all documents or true copies of documents relating to the evidence given by the witness or otherwise to the Terms of Reference which are in the witness's possession or control, or describe as precisely as possible any such documents which are not in the witness's possession or control and, in that case, state where the witness believes the documents to be located;
- (f) must present those exhibits in a way that will facilitate the Commission's efficient and expeditious reference to them, and in particular –
 - i. with respect to hard copies, by placing a letter, number or other identifying mark on each exhibit, and by indexing and paginating or tabbing bundles of documents;
 - ii. with respect to electronic copies, by providing them in fully text-searchable, multi-page PDF/A format together with relevant metadata as defined in the document management protocol to be published on the Commission's website.
- (g) should be prepared by the witness's legal representative where leave to appear and to be legally represented has been granted;
- (h) where the witness has no legal representative, may be prepared by the witness with the assistance of Commission staff by arrangement between the witness and (initially) the Executive Director.

20. Following receipt of a witness's primary statement, Commission staff may request or require the witness:
 - (a) to attend an interview in relation to the contents of the statement or any aspect of the Terms of Reference; and/or
 - (b) to provide a supplementary statement or statements in respect of any matter relating to the Terms of Reference.
21. In some instances, the Commission may require persons to attend to provide information to, and answer questions asked by, Counsel Assisting and/or Commission staff, concerning any matter relating to the Terms of Reference, before any witness statement has been prepared.

Part F. Authority to Appear and Legal Representation at Public Sitings

22. Any person summonsed to attend before the Commission to give evidence pursuant to s 5(1)(a) of the Act may be represented by a lawyer while that person is giving evidence.
23. Otherwise, appearances and legal representation before the Commission at its public sittings will not be allowed without the Commission's leave.
24. Leave to appear entitles a person to participate in the proceedings of the Commission, subject to the Commissioner's control and to such extent as the Commissioner considers appropriate. It is anticipated that any person's leave to appear may:
 - (a) be subject to a condition that no evidence may be tendered or adduced in chief other than by Counsel Assisting the Commission, with the consequence that any evidence the person with leave to appear seeks to have admitted must be included in a witness statement by that person which has been provided in advance to the Executive Director for the attention of Counsel Assisting;
 - (b) be limited by restrictions concerning the topic or topics on which the person (or the person's legal representative) may cross-examine any witness or witnesses, and/or make any submissions;
 - (c) be limited by restrictions on the ability of any person (or any person's legal representative) to make oral submissions; and/or
 - (d) be limited to making submissions on matters within the Terms of Reference of which they have particular knowledge or expertise.
25. Any leave to appear or to be legally represented may be varied or withdrawn or made subject to additional conditions at any time in the discretion of the Commissioner.

26. Any persons (or group of persons) wanting leave to appear or leave to be legally represented at any public sitting of the Commission should send a written application to the Executive Director by email to mail@barrettinquiry.qld.gov.au, as soon as possible after 14 September 2015, and in any event no later than 4.00 pm on Friday 25 September 2015.
27. The application for leave should:
- (a) identify the person wanting leave to appear or to be legally represented;
 - (b) be no more than five A4 pages in length (and in double line spacing);
 - (c) specify those parts of the Terms of Reference in which the person (or group of persons) is interested or in respect of which their interests may be materially affected by the Inquiry;
 - (d) identify (by reference to the Terms of Reference) the grounds on which those interests exist or may be materially affected;
 - (e) specify those parts of the Terms of Reference in which the person (or group of persons) has particular knowledge or expertise enabling them to assist the Commission by submissions, together with the sources of that knowledge and the extent of that expertise;
 - (f) outline (by reference to the Terms of Reference) the subject matter of the proposed submissions;
 - (g) where leave to be legally represented is wanted, provide the name and contact details of the proposed legal representative;
 - (h) provide an email address and telephone number for correspondence.
28. The Commissioner will decide all applications for leave to appear or to be legally represented received in accordance with this guideline at the public sitting of the Commission on Wednesday 30 September 2015, or as soon as practicable afterwards.
29. Nothing in this guideline prevents a person from seeking leave to appear or to be legally represented at any time if something occurs which leads the person to believe their interests may be materially affected. The person or their legal representative should contact the Executive Director urgently by telephone on (07) 3239 6040 or by email to info@barrettinquiry.qld.gov.au to make arrangements for their application to be received and considered.

Part G. Publication and Confidentiality

30. Subject to the Commissioner's determination of any application for confidentiality, all information, witness statements (including exhibits to those statements), documents or submissions provided to the Commission may be published on the Commission's website or otherwise made publicly available.
31. Any person who provides a witness statement or any other document to the Commission, and who wants to apply for confidentiality and/or non-publication orders in relation to the fact of the material being provided or in relation to the whole or any part of the material:
- (a) if they consider it necessary to address confidentiality *before* providing any material, should contact the Executive Director to discuss arrangements that might be made in that regard;
 - (b) subject to any arrangements made under (a) above, should provide the material to the Commission under cover of a written notice stating:
 - i. the part of the information or material in respect of which confidentiality is sought;
 - ii. whether confidentiality is sought in respect of the world at large or subject to acceptance of publication to some person or categories of persons; and
 - iii. the grounds on which such confidentiality is asserted to be necessary and appropriate despite the public nature of the Inquiry;
 - (c) subject to alternative arrangements being made with the Executive Director, should organise the material provided in such a way as to indicate on its face where confidentiality is sought.
32. Where confidentiality is applied for in relation to material provided to the Commission, either:
- (a) the Commissioner shall decide the application on the papers and notify the person or their nominated legal representative accordingly. If confidentiality is refused, the material or information in question will nevertheless be kept confidential for seven days from notification of the decision; or
 - (b) the Commission shall notify the person or their nominated legal representative that they will be required to appear before the Commissioner on a date to be advised for further consideration of the application. The material or information in question will be kept confidential until (and in accordance with) the Commissioner's decision following that appearance.

33. Nothing in this guideline should be taken as limiting the Commissioner's powers, whether at the request of any person or on her own initiative, to treat any material or information as confidential and to take any steps appropriate for the preservation of that confidentiality.

Part H. Further Practice Guidelines

34. The Commission anticipates issuing further practice guidelines concerning matters such as –
- (a) arrangements for public sittings, including dates, sitting times, lists of witnesses who may be called from time to time, and transcripts;
 - (b) access to documents and information in the online data room;
 - (c) access to exhibits tendered at public sittings;
 - (d) written submissions.

The Hon. Margaret Wilson QC
Commissioner