

# Commission of Inquiry

## PARADISE DAM

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### Practice Guideline No.1

#### ***Leave to Appear, Communicating with the Commission, Public Hearings, Witness Statements and Other Matters***

##### **Part A. Authority to Appear and Legal Representation at Public Sittings**

1. Any person summoned to attend before the Commission to give evidence pursuant to s 5(1)(a) of the *Commissions of Inquiry Act 1950 (Qld)* may be represented by a lawyer while that person is giving evidence.
2. Otherwise, appearances and legal representation before the Commission at its public sittings will not be allowed without the Commission's leave.
3. Leave to appear entitles a person or body to participate in the proceedings of the Commission, subject to the Commissioners' control and to such extent as the Commissioners consider appropriate. Any 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, 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;
  - (d) be limited to making submissions on matters within the Terms of Reference of which they have particular knowledge or expertise.
4. Any leave to appear or to be legally represented may be varied or withdrawn or made subject to additional conditions at any time in the discretion of the Chairperson.
5. Any persons (or organisations or group of persons) wanting leave to appear or leave to be legally represented at any public sitting of the Commission should send a brief written application to the Executive Director by email to [secretary@paradisedaminquiry.qld.gov.au](mailto:secretary@paradisedaminquiry.qld.gov.au), as soon as possible, but by no later than 31 January 2020.

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6. The application for leave should:
  - (a) identify the person, group or body wanting leave to appear or to be legally represented;
  - (b) identify those parts of the Terms of Reference in which the person or body is interested or in respect of which their interests may be materially affected by the Inquiry;
  - (c) identify the grounds on which those interests exist or may be materially affected;
  - (d) identify those parts of the Terms of Reference in which the person or body has particular knowledge or expertise enabling that person or body to assist the Commission by submissions, together with the sources of that knowledge and the extent of that expertise;
  - (e) outline (by reference to the Terms of Reference) the subject matter of the proposed submissions;
  - (f) where leave to be legally represented is sought, give the name and contact details of the proposed legal representative;
  - (g) provide an email address and telephone number for correspondence.
7. In some cases it will be clear that an appearance or representation is warranted. In those cases the Commission's Executive Director will communicate, on behalf of the Chairperson, a written notification to the relevant individual, as identified in the application. In other cases, it may be that the Commission will be assisted by further information as to the basis upon which leave to appear ought be granted. It is anticipated that such applications be dealt with at the commencement of the Commission's public hearings.
8. Nothing in these Guidelines prevents a person or body 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 body or their legal representative should contact the Executive Director on +61 7 3096 6324 to make arrangements for that application to be received and considered.
9. It is not necessary to appear at the Inquiry in order to make a submission to it.

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### Part B. Public Hearings

10. The Commission will convene an initial public sitting in mid-February 2020 when:
  - (a) the Chairperson and Counsel Assisting will make general introductory remarks concerning the nature and scope of the Inquiry;
  - (b) applications will be heard for leave to appear or to be legally represented at the future public sittings of the Commission (so far as they have not previously been determined on the papers); and
  - (c) further information as to the conduct of the Inquiry, including likely public sitting dates, will be provided.
11. Subject to the Commissioners' 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.
12. All witnesses giving evidence at the public sittings of the Commission will be called and examined by Counsel Assisting the Commission.
13. The Chairperson in his discretion will allow the cross-examination of a witness on behalf of a person considered by him to have sufficient interest to do so.

### Part C. Communicating with the Commission

14. 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 by email or, where the Commission provides general notice of procedural matters, via the Commission's website.
15. Any person, agency or organisation communicating with the Commission by email should do so initially via [info@paradisedaminquiry.qld.gov.au](mailto:info@paradisedaminquiry.qld.gov.au).
16. Unless otherwise specified by the Commission, all witness statements (including attachments) must be provided to the Commission electronically, to [secretary@paradisedaminquiry.qld.gov.au](mailto:secretary@paradisedaminquiry.qld.gov.au) in fully text-searchable, multi-page PDF/A format, together with relevant metadata as defined in any document management protocol to be published on the Commission's website.
17. 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 16, by email to [secretary@paradisedaminquiry.qld.gov.au](mailto:secretary@paradisedaminquiry.qld.gov.au).

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18. The Commission may make exceptions to the requirement for information to be provided electronically in the format specified in paragraph 16. Anyone seeking an exception or assistance in meeting this requirement should contact the Executive Director to discuss the way the information might be provided to the Commission. Email: [secretary@paradisedaminquiry.qld.gov.au](mailto:secretary@paradisedaminquiry.qld.gov.au) or telephone: +61 7 3096 6324.

### Part D. Evidence and Submissions

19. These Guidelines distinguish between documents containing factual matters within any person's knowledge or belief (evidence), opinion based upon fields of specialised knowledge (opinion 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 (submissions).
20. The Commission:
  - (a) seeks evidence from all persons who can provide factual information or historical documents relevant to any of the Terms of Reference;
  - (b) it also seeks, but from qualified persons only, opinion evidence relevant to the Terms of Reference;
  - (c) will invite submissions from members of the public and, at the conclusion of public hearings, from parties who have been given leave to appear.
21. However, any persons who may 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 A above.
22. 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 [secretary@paradisedaminquiry.qld.gov.au](mailto:secretary@paradisedaminquiry.qld.gov.au) outlining the subject matter of the proposed submissions and why the Commission should receive them. The Commission will inform the person whether the proposed submissions will be accepted.

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### Part E. Summonses

23. The Commission will issue summonses pursuant to s 5 of the *Commissions of Inquiry Act 1950* (Qld) 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 relevant to the Terms of Reference to volunteer assistance to the Commission; and
  - (b) any person in this category who wishes to avoid the issue or operation of a summons should notify the Executive Director immediately so that such a request can be considered by the Commissioner. Notifications can be made by email to [secretary@paradisedaminquiry.qld.gov.au](mailto:secretary@paradisedaminquiry.qld.gov.au)
24. Unless otherwise directed by the Chairperson, the primary evidence of witnesses before the Commission (whether summoned or not) is to be given in the form of a written statement.

### Part F. Witness Statements

25. Witness statements:
- (a) must either be in affidavit form or verified as statutory declarations under the *Oaths Act 1867* (Qld);
  - (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) or (e) below apply;
  - (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) may contain statements of opinion, provided the witness possesses specialised knowledge in a field relevant to the Terms of Reference and exhibits to the statement a copy of his or her curriculum vitae;
  - (f) 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;

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- (g) must present those exhibits in a way that will facilitate the Commission's efficient and expeditious reference to them, and in particular –
    - i. where possible, in electronic form, by providing them in fully text-searchable, multi-page PDF/A format in accordance any document management protocol published on the Commission's website;
    - ii. alternatively, with respect to hard copies, by placing a letter, number or other identifying mark on each exhibit, and by indexing and paginating (or placing tabs in) bundles of documents;
  - (h) should be prepared by the witness's legal representative where leave to appear and to be legally represented has been granted;
  - (i) 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.
26. Following receipt of a witness's primary statement, Commission staff may request or require the witness to:
- (a) attend an interview in relation to the contents of the statement or any aspect of the Terms of Reference; and/or
  - (b) provide a supplementary statement or statements in respect of any matter relating to the Terms of Reference.
27. 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.

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### Part G. Publication and Confidentiality

28. Subject to the Chairperson'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.
29. Any person who provides a witness statement or any other document to the Commission, and who wishes 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 it is considered necessary to make any such order *before* providing any material, should contact the Executive Director by email at [secretary@paradisedaminquiry.qld.gov.au](mailto:secretary@paradisedaminquiry.qld.gov.au), to discuss arrangements;
  - (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.
30. Where confidentiality is applied for in relation to material provided to the Commission, either:
- (a) the Chairperson 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 his or her nominated legal representative that they will be required to appear before the Chairperson 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 Chairperson's decision following that appearance.

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### Part H. Further Practice Guidelines

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

**JOHN H BYRNE AO RFD**  
Chairperson and Commissioner  
6 January 2020