

Practice Guideline – Witnesses and the Conduct of Hearings

1. This Practice Guideline (**Guideline**) should be read together with the *Royal Commissions Act 1917 (SA)* (**Royal Commissions Act**) and the terms of reference contained in the Letters Patent establishing the Royal Commission. ¹
2. This Guideline sets out general guidance about appearing as a witness and the conduct of hearings.
3. The Royal Commission into Early Childhood Education and Care (the Royal Commission) may vary or replace this Guideline at any time as appropriate.

Focus of Hearings

4. Hearings will be held to help define key issues through evidence delivered by experts in early childhood education and care. These hearings are not the only way that the Royal Commission is gathering information. The Royal Commission will also be hearing from people working in and on the system (for example, via facilitated roundtables and forums) as well as parents and families by way of written submissions and the YourSAy online consultation.
5. Prior to the commencement of each round of hearings the Royal Commission will publish a list of topics to be examined. It will also publish a list of the witnesses who will attend and give evidence at each hearing.

Live streaming of Hearings

6. Unless otherwise directed by the Commissioner, hearings will be live streamed with access to the live recording available on the website.

Rules of Evidence

7. Subject to the provisions of the Royal Commissions Act, the conduct of hearings will be within the discretion of The Royal Commission, as determined by the Royal

¹ The Letters Patent for this Royal Commission, containing the terms of reference, are available on the Royal Commission's website at www.royalcommissionecec.sa.gov.au.



Commissioner. In accordance with section 7 of the Royal Commissions Act, the Royal Commission is not bound by the rules of evidence.

Witnesses generally

8. A witness is a person who gives oral evidence at a hearing.
9. The Royal Commission will identify and invite persons to appear voluntarily as witnesses at its hearings.
10. Persons who provide written submissions may be invited to appear as witnesses.
11. The Royal Commission may invite people to appear as witnesses who have not provided written submissions. If you are invited to appear at a hearing and have not provided a written submission, the Royal Commission may ask you to provide a written submission on a particular topic prior to appearing. These submissions will be published on the Royal Commission's website and publication may occur prior to the hearing where possible, or following the hearing.
12. Witnesses may be asked to consider materials compiled by Royal Commission staff in advance of their evidence. Where that occurs, those materials will be made available on the Royal Commission's website.
13. In the ordinary course of events, the Royal Commission does not intend to compel any one to appear at a hearing. This means that there is no intention to issue a witness with a summons (a formal order) directing them to appear. Rather, persons will be contacted and invited to appear voluntarily.
14. However, if a witness is invited to appear and requires a summons (for example, by their employer) this can be facilitated. If a witness declines to appear voluntarily, the Commissioner may issue a summons.
15. The Commissioner will consider requests made by identified witnesses to be represented at a hearing by counsel or solicitor on a case-by-case basis.
16. The Royal Commission does not propose to allow persons "leave to appear".² This is because the focus of the Commission is on gathering evidence to develop new policy and program recommendations. The Royal Commission does not propose to make any adverse factual findings about any witnesses' personal experiences, or whether a particular person, institution or government breached the law or policy.



17. Being granted leave to appear is different to other forms of engagement with the Royal Commission. For example, leave to appear is not required to:
 - a. Provide the Royal Commission with a written submission on any topic within its Terms of Reference;
 - b. Watch the hearings either by live stream or after the hearing by accessing through the web site.

Witness expenses

18. All reasonable travel costs incurred by witnesses invited to appear at hearings will be reimbursed.

Examination of witnesses

19. The purpose of the hearings is to help the Royal Commission to define key issues.
20. It is an inquisitorial, rather than an adversarial process. In other words, unlike court cases, the hearings of the Royal Commission do not consider or resolve disputes between the litigants. The principal function of the hearings is to investigate matters within the Royal Commission's Terms of Reference.
21. In the context of this Royal Commission, the examination of witnesses will focus on exploring new solutions as defined by the Terms of Reference, by asking the person about their knowledge of a body of evidence.
22. Where practicable, Counsel Assisting will make reasonable endeavours to notify witnesses in advance of the hearing of any topics on which questions will be asked of the witness that are not covered by the witness' written submission. Counsel Assisting may, however, ask questions of the witness irrespective of whether notice is given.
23. The nature and form of hearings of the Royal Commission may vary depending on the subject matter of the hearing.

Individual witnesses

24. In general the practice of examining witnesses will be as follows:
 - a. The witness will be asked to approach the place in the hearing room where their evidence will be given;



- b. An official of the Royal Commission will 'call' or read out the name of the witness;
 - c. The witness will be asked to swear or affirm that the evidence they tell the Royal Commission will be truthful;
 - d. Counsel Assisting will then examine the witness.
25. If a witness is represented, their solicitor or counsel may seek leave to examine or cross examine a witness. Examination and cross examination will be by leave only. No general, open ended right of examination, cross examination or tender of evidence will be given to any person.

Panels of witnesses

26. In general, the practice of examining panels of witnesses will be as follows:
- a. An official with the Royal Commission will 'call' or read out the names of the witnesses;
 - b. Each of the witnesses will be asked to swear or affirm that the evidence they give will be truthful;
 - c. Counsel Assisting will then examine the panel including by:
 - i. Identifying particular topics of interest to the panel;
 - ii. Asking particular questions of the witnesses on the panel;
 - iii. Asking each witness on the panel if they want to provide additional comments and/or observations about the evidence of the other witnesses on the panel.

Tendering of documents

27. Subject to direction by the Commissioner, Counsel Assisting will decide
- a. Which documents will be tendered; and
 - b. When those documents will be tendered.



Evidence to be public

28. Unless the Commissioner makes a contrary direction:
- a. Hearings will be recorded, and those recordings will be live streamed and made available on the website following the hearing;
 - b. Transcripts of each hearing will be placed on the Royal Commission's website as soon as practicable after the transcripts become available;
 - c. Documents which have been tendered as exhibits will be placed on the Commission's website as soon as practicable after the documents have been tendered into evidence.

Restricted Publication Orders

29. The Commissioner has powers under the Royal Commission Act to order that evidence given before it is not published, provided the Commissioner considers it to be in public interest to make sure an order, or in order to prevent undue prejudice or undue hardship to any person.
30. If you do not want your evidence published, please advise the Commission as soon as possible.

Media Guidelines

31. Unless the Commissioner orders otherwise, filming, audio recording or still photography is not permitted during a hearing.

