

PRACTICE GUIDELINE 01/2022

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

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Part A. Introduction

1. The Commission of Inquiry into Forensic DNA Testing in Queensland (the Commission) was established by Order in Council made under the *Commissions of Inquiry Act 1950* (the Act). The Terms of Reference for the Commission are available on the Commission's website: www.dnainquiry.qld.gov.au and they require the Commissioner to inquire with respect to:
 - a) *whether the methods, systems and processes used by the Queensland Police Service and the Forensic and Scientific Services for forensic Deoxyribonucleic Acid (DNA) collection, testing and analysis are, and have been, reliable, conducted in accordance with best international practice, and result in, and have resulted in, accurate reporting of the presence of DNA in samples submitted for testing and accurate matching of DNA samples; and,*
 - b) *whether, if such methods, systems or processes are not, or have not been, reliable, or conducted in accordance with best international practice, or do not result, or have not resulted, in accurate reporting or accurate matching, the reasons for any such failure.*
2. Any person with information relevant to the Terms of Reference, whether confidential or otherwise, should not hesitate to contact the Commission's Executive Director, Jess Wellard, to discuss the provision of that information to the Commission. Ms Wellard can be contact by email at enquiries@dnainquiry.qld.gov.au, or by telephone on (07) 3003 9722.
3. Any person who wishes to make a general submission to the Commission should do so by following the process set out on the Commission's website at www.dnainquiry.qld.gov.au.

Initial public hearing

4. The Commissioner will hold an initial public hearing on Friday 26 August 2022 at 9.30 am in courtroom 17 in the Brisbane Magistrates Court building at 363 George Street, Brisbane. At this initial public hearing:
 - 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 hearings of the Commission will be heard; and
 - c) further information as to the conduct of the Inquiry, including likely public hearing dates, will be provided.
5. The Commission's hearings will usually be open to the public and live-streamed via its website.

Part B. Communicating with the Commission

6. Any person or organisation wanting to speak to the Commission should do so initially via email to enquiries@dnainquiry.qld.gov.au.

7. Submission of any electronic documents (including witness statements and attached exhibits, submissions and all other information) to the Commission is to be in accordance with instructions given by the Commissioner or any document management protocol published on the Commission's website.
8. The Commissioner may make exceptions to the requirement for information to be provided electronically. 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.
9. Where possible, all written material submitted to the Commission should be in fully text-searchable, multi-page PDF format.

Part C. Leave to Appear at Public Hearings

10. Any person summoned to attend before the Commission to give evidence pursuant to section 5(1)(a) of the Act may be represented by a lawyer while that person is giving evidence.
11. Otherwise, appearances and legal representation before the Commission at its public hearings require the Commissioner's leave. Leave to appear entitles a person to participate in the proceedings of the Commission to such extent as the Commissioner considers appropriate.
12. The following guidance is provided for a person's leave to appear. 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 Commissioner, 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.
13. A person seeking leave to appear at public hearings should complete the form entitled "Application for Leave to Appear at the Public Hearings of the Commission", available on the Commission's website.
14. Written submissions attached to the application should be limited to two pages and address:
 - a) the parts of the Terms of Reference in which the person is interested or in respect of which their interests may be materially affected by the Inquiry and the basis of that interest or how that interest may be materially affected;
 - b) the parts of the Terms of Reference in which the person has particular knowledge or expertise enabling that person to assist the Commission including details of the knowledge or expertise; and/or
 - c) why those matters cannot be adequately dealt with through written submissions or statements.
15. It is not necessary to seek "leave to appear" for a person to merely attend and observe the public hearings.
16. Applications for leave to appear should be submitted by 5pm on Monday 22 August 2022 by email to enquiries@dnainquiry.qld.gov.au.
17. Nothing in this Practice Guideline prevents a person from seeking leave to appear at any time after the public hearings have commenced. In such a case, the person should contact the Executive Director to arrange for the application to be received and considered.

18. Any leave to appear may be varied, withdrawn or made subject to additional conditions at any time at the discretion of the Commissioner.

Part D. Summonses

19. From time to time, the Commissioner may issue summonses pursuant to section 5 of the Act requiring persons to attend to give evidence and/or to produce documents and/or to give information and answer questions.
20. The Commissioner encourages any person with evidence or information relevant to the Terms of Reference to volunteer assistance to the Commission.
21. Unless otherwise directed by the Commissioner, the primary evidence of witnesses before the Commission (whether summoned or not) is intended to be given in the form of a written statement.

Part E. Witness Statements

22. The following guidance is provided for the provision of witness statements to the Commission:
 - a) Statements should be either in the form of an affidavit or statutory declaration;
 - b) Statements must contain only statements of factual matters within the direct knowledge of the witness, unless c) below applies;
 - c) 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;
 - d) must exhibit (by attachment or accompanying presentation) all documents or copies of documents relating to the evidence which are in the witness's possession or control or describe as accurately 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;
 - e) 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 format together with relevant metadata as defined in any document management protocol published on the Commission's website.
 - f) should be prepared by the witness's legal representative where leave to appear has been granted;
 - g) 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 the Executive Director.

Part F. Conduct of Public Hearings

23. The procedure to be followed at public hearings will be subject to the directions of the Commissioner.
24. Generally, and subject to the Commissioner's discretion:
 - a) all witnesses giving evidence at the public hearings will be called and examined by Counsel Assisting the Commission. A witness's examination-in-chief will usually involve the tendering of a statement provided by the witness to Counsel Assisting in advance of the hearing. In some cases, the witness's examination-in-chief may be taken orally;
 - b) the order of further examination of each witness will usually be:

- i. examination by the parties given leave to appear;
 - ii. examination by the lawyer or agent (if any) representing the witness; and
 - iii. re-examination by Counsel Assisting.
25. The Commissioner may limit the issues about which a witness may be examined and limit the time available for examination by any person.
26. At the completion of the examination of a witness, the witness shall, unless excused from further attendance, be taken to have been stood down only and to be subject to recall at the direction of the Commissioner.

Part G. Publication and Confidentiality

27. Subject to the Commissioner's determination of any application for confidentiality, any information, witness statements (including exhibits to those statements), documents or submissions provided to the Commission may be published in whole or in part on the Commission's website or otherwise made publicly available at the Commissioner's complete discretion.
28. 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, should contact the Executive Director to discuss arrangements that might be made in that regard.
29. Nothing in this guideline should be taken as limiting the Commissioner's powers, whether at the request of any person or on his own initiative, to treat any material or information as confidential and to take any steps appropriate for the preservation of that confidentiality.

WALTER SOFRONOFF QC

Commissioner