



Special Commission of Inquiry into LGBTIQ hate crimes

PRACTICE GUIDELINE 1 – Public Hearings

1. This Practice Guideline (**PG 1**) relates to the conduct of the Special Commission of Inquiry into LGBTIQ Hate Crime (**Special Commission**). It should be read in conjunction with the *Special Commissions of Inquiry Act 1983* (NSW) (**Act**) and the terms of reference contained in the Letters Patent establishing the Special Commission dated 19 April 2022.
2. The Special Commission will hold public and private hearings as and when required. PG 1 sets out guidance about the procedures the Special Commission will follow in relation to:
 - a) Authorisation to appear and legal representation at hearings;
 - b) The conduct of public hearings; and
 - c) The provision of notices of adverse findings.
3. This Practice Guideline and any future Practice Guidelines may at any time be varied, changed or replaced as the Special Commission considers appropriate.

PART A - AUTHORISATION TO APPEAR AND LEGAL REPRESENTATION

4. Upon application, the Commissioner may authorise a person¹ (or a legal practitioner on their behalf) to appear at a public hearing or a specified part of a public hearing if it is shown to the satisfaction of the Commissioner that the person is substantially and directly interested in any subject matter of the hearing (or otherwise satisfies the requirement of s 12(2) of the Act). Authorisation can be granted subject to conditions.
5. Subject to the Commissioner's discretion, a witness at a public hearing may be regarded as having a substantial and direct interest, or as otherwise satisfying s 12(2) of the Act.
6. Authorisation to appear entitles the person to whom it is granted to participate in the public hearing subject to the Commissioner's control and to such extent as the Commissioner considers appropriate. In some circumstances the Commissioner may:
 - (a) limit the person's participation to the provision of submissions in writing; or
 - (b) impose limits on the extent of any examination and cross-examination of witnesses (see further below in relation to conduct of hearings).
7. The Commissioner may withdraw authorisation to appear or make the authorisation subject to altered or additional conditions, at any time.

¹ A reference to a 'person' or 'people' in this Practice Guideline includes a body corporate or government agency as well as an individual.

Process for applications for authorisation to appear

8. As the Special Commission determines its programme of public hearings, these will be published on its website. Details of upcoming public hearings may include the scope and purpose of those public hearings.
9. At the time that the date and subject matter of a hearing is published, the Special Commission will invite written applications for authorisation to appear from people who believe that they have a substantial and direct interest in the subject matter of the particular public hearing.
10. Any application for authorisation to appear or for a witness to be legally represented should be made in writing (including by email) to the Solicitor Assisting the Special Commission in the first instance. The application should provide the name of the person or the witness, the names of the legal representatives who seek authorisation and the reason(s) why the person or the witness has a sufficient interest.
11. Applications may be determined on the papers in advance of each hearing and the outcome communicated to the applicant, or 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 further consideration of the application.
12. If it is not practicable to determine an application for leave to appear in advance of the hearing date, an application may be determined at the hearing.
13. A person may seek leave 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 hearing.
14. The Special Commission prefers that each person seeking to be legally represented have separate and independent representation. The Commissioner will, however, receive and consider applications that a single lawyer or team of lawyers be permitted to represent more than one person where:
 - (a) it can be demonstrated that there is some reasonable purpose for seeking representation of that kind;
 - (b) the most senior lawyer involved is able to assure the Special Commission that no conflict of interest is anticipated; and
 - (c) all of the lawyers involved give an undertaking, through the most senior lawyer, to inform the Commission immediately upon recognising that any conflict of interest has arisen.

PART B - CONDUCT OF PUBLIC HEARINGS

15. At, or shortly prior to the commencement of each week of a public hearing, the Special Commission may publish on its website a list of witnesses proposed to be called that week. The scheduling of witnesses as published may change from time to time.
16. Public hearings of the Special Commission will sit on weekdays. Usual sitting hours will be from 10.00 am to 1.00 pm and from 2.00 pm to 4.00 pm.

17. Subject to the control of the Commissioner, Counsel Assisting will determine what witnesses are to be called, what documents are to be tendered to the Special Commission, and in what order witnesses will be called and examined. It may be necessary to call some witnesses to give evidence on more than one occasion.
18. The Special Commission may decide to receive the evidence of a witness orally or in statement form. The Special Commission will decide whether to require a witness giving evidence by statement to attend for examination or cross-examination.

Application for witnesses to appear before the Special Commission

19. All witnesses at a public hearing will be called by Counsel Assisting.
20. Any person authorised to appear at a hearing who wishes to have evidence of a witness or witnesses placed before the Commission is to notify Counsel Assisting of the names of such witnesses, and is to provide a signed statement of their expected evidence (if possible in the form of a statutory declaration) as soon as practicable.
21. If considered necessary or desirable, Counsel Assisting and/or Commission staff may interview such witnesses and take or request further statements from such witnesses. It is not necessary that any such interviews or obtaining of additional statements or information occur in the presence of the person, or legal representatives thereof, who sought to have the evidence of such witnesses placed before the Commission
22. Counsel Assisting will determine whether or not to call the witness. An application may be made directly to the Commissioner to call the witness only after the above procedure has been completed and Counsel Assisting has indicated that the witness will not be called.

Examination and Cross-Examination of Witnesses

23. In the usual case, Counsel Assisting will call and examine (including cross-examine) the witness. In some circumstances, the witnesses might be examined (including cross-examined) by more than one of the Counsel Assisting. Subject to the Commissioner's discretion, the witness may next be cross-examined by or on behalf of any person considered by the Special Commission to have sufficient interest to do so, and may then be examined by his or her own legal representative. Counsel Assisting may re-examine. At all times, duplication and repetition is to be avoided and the Commissioner will disallow any questions of such nature.
24. 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;
 - b. set out the issues to be canvassed; and
state whether a contrary affirmative case is to be made in some respect, and if so the details of that case.
25. The Commissioner may:
 - a. limit the particular topics or issues upon which the person may examine and cross-examine witnesses; and

- b. impose time limits upon examination and cross-examination.
26. The Commissioner may:
- a. disallow questions posed to witnesses; and
 - b. ask questions of a witness at any time.
27. A copy of any document proposed to be put to a witness in cross-examination must be provided to Counsel Assisting as soon as possible after a decision is made to use the document for such purpose, and in all cases, prior to its intended use.

Procedures relating to the tender, provision and inspection of documents

28. Subject to the control of the Commissioner, Counsel Assisting will determine which documents are to be tendered, and when they will be tendered.
29. Before the commencement of a public hearing, each person granted leave to appear at that hearing may, in the discretion of Counsel Assisting or the Solicitors Assisting the Special Commission, be given confidential access to documents that are likely to be tendered as exhibits at the public hearing and which could affect the person's interests.
30. Any person wishing to have a document placed before the Special Commission at a public hearing must notify the Special Commission by providing a copy of the document to the Solicitor Assisting. Counsel Assisting will decide whether or not to tender the document. An application may be made directly to the Commissioner to tender a document only after the above procedure has been completed and Counsel Assisting has indicated that the document will not be tendered.
31. Any person granted authorisation to appear at a public hearing may request to inspect and copy any document tendered in evidence (and not subject to any relevant order restricting publication or access) for the purpose only of appearance before the Special Commission. Special Commission staff may require suitable arrangements to be made with the person seeking inspection and/or copying of tendered documents, including as to the costs of any such copying, before permitting access to the document(s).
32. Documents and other materials may be tendered to the Special Commission by Counsel Assisting, and received into evidence, outside formal hearings of the Special Commission.

Non-publication orders and closed hearings

33. In an appropriate case, the Commissioner may:
- (a) direct non-publication of the name, or the use of a pseudonym, to protect the name of any witness or any person about whom evidence is given;
 - (b) give directions otherwise preventing or restricting the publication of evidence given before the Commissioner or of matters contained in documents tendered to the Commission; and
 - (c) direct during a public hearing that part of such a hearing take place in private, and may give directions as to the persons who may be present during such part of the hearing to be held in private.

34. Any person who is authorised to appear who seeks a direction for a closed hearing for particular evidence, or a direction for non-publication of particular evidence must (as soon as is reasonably practicable) provide Counsel Assisting in advance with a copy of the proposed application, the form of the direction sought, the content of the proposed evidence and any submissions in support of the application.

Addresses and submissions on evidence

35. At the conclusion of the evidence at a public hearing and at the discretion of the Commissioner, it will be determined who will have the right to address the Commission, when, in what form (eg only in writing), on what issues, and in what order.

PART C – NOTICE OF POTENTIAL ADVERSE FINDINGS

36. Notice of potential adverse findings may be provided by way of the service of written submissions prepared by Counsel Assisting which recommend that the Commissioner make such findings. The written submissions of Counsel Assisting should be regarded by any person so served as a notice of potential adverse findings with respect to any relevant recommended findings addressed therein.
37. Further or in the alternative, if the Commissioner forms a provisional view that an adverse finding on a critical or significant issue may be made against a person, and that finding is not recommended by or referred to in the written submissions of Counsel Assisting (if any) as served on that person, a written notice of such possible adverse findings will issue to that person unless the Commissioner also forms the view that any relevant finding should remain confidential from the public and that person for the purpose of a potential future investigation..
38. Where a notice of potential adverse findings is so provided, by either of those means, to a person given authorisation to appear, the person receiving that notice will be given an opportunity to respond to that notice within the timetable set for reply submissions (see Practice Guideline 3 at [6]–[7]).
39. Where a notice of potential adverse findings is so provided, by either of those means, to a person not given authorisation to appear, that person will be given no less than two weeks to respond in writing to such notice.

Liaison with the Special Commission

40. All contact with the Special Commission made necessary by this or other Guidelines, or other enquiries in respect of the Inquiry, should be made through the Solicitor Assisting at contact@specialcommission.nsw.gov.au.

30 September 2022 (amended 18 July 2023)