

BUNDABERG HOSPITAL COMMISSION OF INQUIRY

PRACTICE DIRECTION – 18 MAY 2005

PART A. GENERAL

1. **[Application of Practice Direction.]** Save where the context indicates otherwise, this Practice Direction applies in respect of all proceedings of the Commission, including:
 - 1.1 public sittings;
 - 1.2 closed sittings; and
 - 1.3 proceedings other than sittings.

2. **[Interpretation.]**
 - 2.1 In this Practice Direction, the words and expressions set out in Schedule I have the meanings respectively assigned to them.
 - 2.2 This Practice Direction shall be read and construed as if it were a statute, in accordance with the provisions of the *Acts Interpretation Act 1954*.

3. **[Documents and Communications.]**
 - 3.1 All communications to the Commission should be addressed to the Secretary, in accordance with the contact details set out in Schedule II.
 - 3.2 Statements, initial submissions, final submissions, and other written documents furnished to the Commission may be supplied either:
 - on paper; or
 - in an electronic format in accordance with Schedule III.

4. **[Departure from Practice Direction.]** The Chairman may, in his discretion, direct that any provision of this Practice Direction, insofar as it would otherwise apply to a particular person or in particular circumstances:
 - 4.1 Shall not apply; or
 - 4.2 Shall apply with such modifications as the Chairman directs.

5. **[Calendar of Sittings.]**
 - 5.1 A calendar of the Commission's sitting dates is available on the Commission's website at:

<http://www.bhci.qld.gov.au/sittings.htm>
 - 5.2 Sitting dates may be rescheduled for a variety of reasons, and an up-to-date calendar of the Commission's sitting dates will be made available of the Commission's website from time to time.

6. [Conduct at Sittings.]

6.1 Attention is drawn to s.9(2) of the *Commissions of Inquiry Act 1950*, which relevantly provides:

(2) A person who—

(a) ...; or

(b) being called or examined as a witness before a commission, refuses to be sworn or to make an affirmation or declaration or refuses or otherwise fails to answer any question put to the person by the commission or any commissioner, which the chairperson is satisfied is relevant to the inquiry; or

(c) wilfully threatens or insults—

(i) a commission; or

(ii) any commissioner; or

(iii) any lawyer or other person appointed, engaged or seconded to assist a commission; or

(iv) any witness or person summoned to attend before a commission; or

(v) any lawyer or other person having leave to appear before a commission; or

(d) ...; or

(e) misbehaves before a commission; or

(f) interrupts the proceedings of a commission; or

(g) obstructs or attempts to obstruct a commission, a commissioner, or a person acting under the authority of the chairperson, in the exercise of any lawful power or authority; or

(h) does any other thing which, if a commission were a court of law having power to commit for contempt, would be contempt of that court; or

(i) publishes, or permits or allows to be published, any evidence given before a commission or any of the contents of a book, document, writing or record produced at the inquiry which a commission has ordered not to be published;

shall be guilty of contempt of the commission concerned.

6.2 No photography or audio or visual recording shall be permitted during sittings of the Commission without the prior written permission of, or in accordance with a Ruling issued by, the Chairman.

6.3 Mobile telephones, pagers and similar devices brought to a sittings of the Commission must be either:

- switched off; or
- configured so as to make no audible sound.

6.4 However, a medical practitioner or allied health-care professional, who is present at a sitting of the Commission whilst “on call”, is not required to disable his or her mobile telephones, pager or similar device.

PART B. LEAVE TO APPEAR

7. [Applications for Leave.]

- 7.1 Any person with an interest in any issue may apply for leave to appear.
- 7.2 A person wishing to apply for leave to appear should so advise the Secretary at the earliest opportunity.
- 7.3 Except as provided in Part C, a person (other than Counsel Assisting) may not appear before the Commission without applying for leave to appear.

8. [Timing of Application.]

- 8.1 Applications for leave to appear will be invited at the commencement of the Commission's public sittings.
- 8.2 By prior arrangement with the Secretary or Counsel Assisting, applications for leave to appear may also be made at any other convenient time during the course of the Commission's public sittings.

9. [Grant of Leave.] Leave to appear may be granted either:

- 9.1 For the duration of the Commission's public sittings; or
- 9.2 On a more limited basis.

10. [Withdrawal or Modification of Leave.] The Chairman, in his discretion, may at any time:

- 10.1 Withdraw a grant of leave to appear; or
- 10.2 Impose limitations, restrictions or conditions in respect of a grant of leave to appear.

11. [Representative.] Subject to any condition applying in respect of a grant of leave to appear, a person granted such leave may appear:

- 11.1 At the person's own expense, by a legal practitioner; or
- 11.2 In the case of an individual, in person; or
- 11.3 In the case of an organizations, by an office-bearer, member or employee approved by the Chairman; or
- 11.4 In the case of an individual who is an officer, member or employee of an organization which has been granted leave to appear, by the organization's representative; or
- 11.5 With the leave of the Chairman, by any other competent and responsible person.

PART C. REPRESENTATION OF WITNESSES

12. **[Representative.]** A witness, who has not otherwise been granted leave to appear, may (at the election of the witness) be represented for the purpose of giving evidence:
- 12.1 At the witness's own expense, by a legal practitioner; or
 - 12.2 If the witness is an officer, member or employee of an organization which has been granted leave to appear, by the organization's representative; or
 - 12.3 With the leave of the Chairman, by any other competent and responsible person.
13. **[Assistant.]** A witness who does not have a representative may be assisted, for the purpose of giving evidence, by any person approved by the Chairman.

PART D. EVIDENCE BY STATEMENTS

14. **[All evidence to be given by Statement.]** Unless the Chairman otherwise directs, the evidence of each witness shall be:
- 14.1 Reduced to the form of a written statement; and
 - 14.2 Verified; and
 - 14.3 Furnished to the Secretary.
15. **[Contents of Statements.]** Except as otherwise provided herein, a witness statement must only contain factual evidence of matters:
- 15.1 Within the direct knowledge of the witness; or
 - 15.2 Of which the witness has been informed, if the source of the information is identified; or
 - 15.3 Within the understanding or belief of the witness, if the basis for the understanding or belief is set out.
16. **[Expert Witnesses.]** The statement of a witness with appropriate expertise may include opinion evidence if the statement discloses:
- 16.1 The witness's expert qualifications and experience; and
 - 16.2 The facts which form the foundation of the opinion; and
 - 16.3 The reasoning which underlies the opinion.
17. **[Preparation of Statements.]**
- 17.1 If the witness has a representative, the witness's statement should be prepared by that representative.
 - 17.2 A witness who does not have a representative may prepare his or her own statement.

17.3 At the request of a witness who does not have a representative, Commission Staff may prepare, or assist in the preparation of, a statement for the witness.

18. **[Review of Statements.]** Commission Staff:

- 18.1 Shall review the statement of each witness;
- 18.2 May interview any witness who has provided a statement;
- 18.3 May prepare a revised or supplementary statement for any witness; and
- 18.4 May require a witness to verify a revised or supplementary statement.

PART E. ORAL TESTIMONY

19. **[When Required.]** Having reviewed the statement of a witness, the Chairman shall determine if the witness is required to give oral testimony.

20. **[Criteria.]** In determining whether a witness is required to give oral testimony, the Chairman may taken into account any relevant circumstances, including:

- 20.1 Whether it is in the public interest that the witness give oral testimony;
- 20.2 Whether the evidence of the witness is (or is likely to be) contentious or controversial;
- 20.3 Whether the evidence of the witness contradicts the evidence of another witness, or otherwise gives rise to a question of credibility;
- 20.4 Whether any person who has been given leave to appear wishes to cross-examine the witness;
- 20.5 Whether there is reason to suspect that the witness's statement does not disclose all relevant information the the witness is able to provide;
- 20.6 Whether the witness's privacy, or the confidentiality of confidential evidence, will (or is likely to) be compromised if the witness gives oral testimony;
- 20.7 Whether giving oral testimony will put the witness to undue inconvenience, embarrassment or expense.

21. **[Order of Examination.]** In accordance with the usual practice at Royal Commissions and Commissions of Inquiry¹, where a witness gives oral testimony:

- 21.1 The witness shall first be examined by Counsel Assisting;
- 21.2 The witness's representative (if any) may then further examine the witness;
- 21.3 The representative for each other person who has been granted leave to appear may, so far as the Chairman thinks proper, then cross-examine the witness on any matter which the Commission deems relevant to the Inquiry, in such order as the Chairman directs;

¹ see *Royal Commission re a Brisbane Hotel*, [1964] QWN 28, per Gibbs J. (as he then was)

- 21.4 The witness's representative (if any) may then re-examine the witness; and
- 21.5 Counsel Assisting may then further re-examine the witness.
22. **[Unrepresented Witness.]** If a witness is unrepresented, the witness may offer any additional oral testimony the witness considers appropriate:
- 22.1 By way of evidence-in-chief, immediately after the witness is examined by Counsel Assisting; and
- 22.2 By way of re-examination, immediately before the witness is re-examined by Counsel Assisting.
23. **[Scheduling of Witnesses.]** The Commission is anxious to ensure that witnesses who are required to give oral testimony are not put to any greater inconvenience or expense than is absolutely necessary. To that end:
- 23.1 Each such witness is requested to inform Commission Staff of the dates and times which are most convenient for the witness, and whether it would be more convenient for the witness to give oral testimony in Brisbane or in Bundaberg.
- 23.2 Each such witness will be advised by Commission Staff of an indicative date and time to give oral testimony, and will be further advised by Commission Staff of any change to the indicative date and time.
- 23.3 Each such witness should provide contact details (including, preferably, a mobile telephone number) to Commission Staff, so that any last-minute scheduling changes can be notified to the witness.
- 23.4 Commission sittings may be scheduled outside ordinary court hours where necessary to meet the convenience of a witness, and especially to prevent any disruption to the provision of medical services by the witness in the course of his or her employment.
24. **[Witness Excused or Stood Down.]**
- 24.1 At the completion of the oral testimony of a witness, the Chairman may excuse a witness from further attendance.
- 24.2 Unless a witness is excused from further attendance, the witness shall be taken to have been stood down only, and shall be liable to being recalled at the direction of the Commission.
25. **[Transcripts of Evidence.]** Subject to any order under the *Commissions of Inquiry Act 1950* or any ruling or direction under Part G:
- 25.1 The following persons are entitled to receive free copies of transcripts, either in a "hard copy" or an electronic format:
- Any person who has been granted leave to appear; and

- Any witness who gives oral testimony, but only the transcript containing the witness's testimony.
- 25.2 Any other person may obtain a copy of any transcript from the Secretary upon payment of any reasonable photocopying charge required by the Secretary; and
- 25.3 Transcripts of evidence given at public sittings of the Commission will be made available on the Commission's website² at:
<http://www.bhci.qld.gov.au/transcripts.htm>

PART F. DOCUMENTARY EVIDENCE

26. **[Copies.]** Unless otherwise directed by the Chairman, a person required to produce a document to the Commission shall not produce the original thereof, but shall be taken to satisfy the requirement by producing or making available to the Commission either:
- 26.1 A true, accurate and complete photocopy of the document; or
- 26.2 A true, accurate and complete facsimile reproduction of the document in an electronic format in accordance with Schedule III.
27. **[Confidentiality.]** The provisions of Part G, relating to confidential evidence, apply *mutatis mutandis* to documentary evidence.
28. **[Availability of Exhibits.]** Subject to any order under the *Commissions of Inquiry Act 1950* or any ruling or direction under Part G:
- 28.1 A copy of any document provided to the Commission which becomes an exhibit may be obtained from the Secretary upon payment of any reasonable photocopying charge required by the Secretary; and
- 28.2 Copies of documents provided to the Commission which become exhibits will be made available on the Commission's website³ at:
<http://www.bhci.qld.gov.au/exhibits.htm>

² Please note that, due to the volume of evidence expected to be received by the Commission, it may not be possible for all transcripts to be made available on the Commission website. Commission staff will do their best to ensure that any transcripts likely to attract particular interest are given priority.

³ Please note that, due to the volume of documentary evidence expected to be received by the Commission, it may not be possible for all exhibits to be made available on the Commission website. Commission staff will do their best to ensure that any exhibits likely to attract particular interest are given priority.

PART G. CONFIDENTIAL EVIDENCE

29. **[Claim of Confidentiality.]** The statement of a witness shall state if the witness desires confidentiality in respect of:
- 29.1 His or her name, address, job description, or other identifying information; and/or
 - 29.2 The fact that he or she has provided evidence to the Commission; and/or
 - 29.3 The whole or any part of the witness's evidence.
30. **[Grounds of Confidentiality.]** If the statement of a witness expresses a desire for confidentiality in accordance with paragraph 29, the statement must:
- 30.1 Specify the particular matters in respect of which confidentiality is sought; and
 - 30.2 Set out the grounds on which confidentiality is sought.
31. **[Release of Information.]** Where a claim of confidentiality is made (whether in accordance with paragraphs 29 and 30 or otherwise), the relevant information must not be disclosed to any person outside the Commission until the Chairman has ruled on the claim for confidentiality.
32. **[Ruling.]** The Chairman may rule on a claim for confidentiality, by:
- 32.1 Directing that evidence of the witness be given at a closed hearing; and/or
 - 32.2 Ordering that the evidence or other relevant information not be disclosed; and/or
 - 32.3 Directing that the witness's statement not be disclosed to any person outside the Commission; and/or
 - 32.4 Directing that disclosure of the witness's statement to any person outside the Commission be subject to such limitations, restrictions or conditions as the Chairman thinks fit; and/or
 - 32.5 Over-ruling the claim for confidentiality, in whole or in part.
33. **[Chairman's Power.]** Nothing in this Practice Direction is to be taken as limiting the Chairman's powers, whether at the request or suggestion of a witness or a person who has been granted leave to appear, or of the Chairman's own initiative, to take any steps to preserve the confidentiality of any evidence or material.

PART H. SUBMISSIONS

34. **[Initial Submission.]** Any person who applies for leave to appear must furnish to the Commission, prior to the time when the application is made (or at such later time as the Chairman directs):
- 34.1 An initial submission in writing which sets out, in a summary way, the person's attitude to each issue in respect of which the person has an interest; and
 - 34.2 In the case of an organization, the name of an individual who is responsible for the initial submission, and who is willing to give oral testimony in support of, and to be cross-examined in respect of, the attitudes expressed in the initial submission.
35. **[Not Binding.]** A person shall not be held to the attitudes expressed in an initial submission if the person's attitude changes due to evidence received by the Commission or for any other reason.
36. **[Final Submissions.]** The Commission shall fix a date by which:
- 36.1 Any person who has been granted leave to appear must furnish to the Commission a final submission in writing which sets out, in full detail, the person's submissions in relation to each issue in respect of which the person has an interest; and
 - 36.2 Any other person may provide a similar final submission to the Commission.
37. **[Oral Addresses.]** The Commission may invite oral addresses, at a public sitting of the Commission, from:
- 37.1 Any person who has provided a final written submission; and
 - 37.2 In the Commission's discretion, any other person.

Part I. Allowances to Witnesses

38. **[Attendance Allowance.]**
- 38.1 Unless another provision applies, each witness who is required to give oral testimony, other than a public servant, shall be entitled to a payment ("**attendance allowance**") for each day of attendance.
 - 38.2 In the case of a witness whose attendance involves travel of more than 100 km from his or her ordinary place of residence or employment, including a witness who is a public servant, the attendance allowance shall include a component to cover meals and refreshments.

38.3 Attendance allowances, per day of attendance, shall be calculated in accordance with the following table:

a witness, other than a public servant, whose attendance involves travel of more than 100 km from his or her ordinary place of residence or employment	\$150.00
a witness, other than a public servant, whose attendance does not involve travel of more than 100 km from his or her ordinary place of residence or employment	\$100.00
a witness, who is a public servant, whose attendance involves travel of more than 100 km from his or her ordinary place of residence or employment	\$50.00
a witness, who is a public servant, whose attendance does not involve travel of more than 100 km from his or her ordinary place of residence or employment	nil

39. [Income Loss.]

- 39.1 A witness who suffers loss of income or additional business expenses as a result of his or her attendance may apply to the Secretary for reimbursement of such loss or expenses (“**income loss**”) for each day of attendance.
- 39.2 Any application for reimbursement of income loss shall be accompanied by appropriate documentary evidence, such as a letter from the witness’s employer, a letter from an accountant stating the amount of income lost or business expenses incurred, or evidence of the cost of engaging a *locum tenans* to fill the place of the witness during his or her absence.
- 39.3 Any reimbursement of income loss shall be at the discretion of the Chairman upon the recommendation of the Secretary.
- 39.4 A reimbursement of income loss shall be in lieu of, and not in addition to, an attendance allowance.

40. [Personal Costs.]

- 40.1 A witness may apply to the Secretary for reimbursement of actual costs (other than travel or accomodation expenses) incurred for each day of attendance as a result of his or her attendance (“**personal costs**”), including:
 - babysitting or child care costs; or
 - costs or providing a replacement carer for a sick, infirm or elderly family member.
- 40.2 Any application for reimbursement of personal costs shall be accompanied by appropriate documentary evidence, such as invoices, accounts, receipts or credit card payment vouchers.
- 40.3 Any reimbursement of personal costs shall be at the discretion of the Chairman upon the recommendation of the Secretary.

- 40.4 In the discretion of the Chairman upon the recommendation of the Secretary, a witness may receive reimbursement of personal costs in addition to (and not in lieu of):
- an attendance allowance; or
 - reimbursement of income loss.

41. [Travel and Accommodation Expenses.]

- 41.1 A witness who expects to incur travel or accommodation expenses in connection with his or her attendance should consult the Secretary before such expenses are incurred.
- 41.2 The Secretary may, in his discretion, either:
- arrange travel and accommodation for the witness at the expense of the Commission; or
 - approve travel and accommodation arrangements proposed by the witness.
- 41.3 A witness who has incurred travel or accommodation expenses in connection with his or her attendance may apply to the Secretary for a refund of such expenses.
- 41.4 Any such application shall be accompanied by appropriate documentary evidence, such as invoices, accounts, receipts or credit card payment vouchers.
- 41.5 Travel or accommodation expenses incurred with the approval of the Secretary shall be refunded to the witness.
- 41.6 Any refund of travel or accommodation expenses incurred without the approval of the Secretary shall be at the discretion of the Chairman upon the recommendation of the Secretary.
- 41.7 A refund of travel or accommodation expenses incurred without the approval of the Secretary shall not (except at the discretion of the Chairman) exceed:
- the cost of the most economical form of public transport available; or
 - the cost of travel and accommodation arrangements which the Secretary would have approved if consulted in advance.

42. [Calculation of Allowances.] In calculating all allowances to witnesses, the expressions “day of attendance” shall be taken to include each day (including a part of a day), on which the witness either:

- 42.1 gives oral testimony; or
- 42.2 is present at or in the vicinity of the Commission sittings at the request of Commission Staff to give oral testimony; or
- 42.3 is travelling to or from a sittings of the Commission for a distance of more than 100 km from his or her ordinary place of residence or employment; or

- 42.4 having travelled to a sittings of the Commission for a distance of more than 100 km from his or her ordinary place of residence or employment, is waiting:
- to give oral testimony; or
 - to return to his or her ordinary place of residence or employment.

43. **[Prisoners.]** Notwithstanding any other provision, no allowance of any kind shall be payable to a prisoner of the Crown.



Anthony J H Morris QC

Chairman

18 May 2005

SCHEDULE I: DEFINITIONS

- (1) "Commission Staff" means:
 - a. Senior and Junior Counsel Assisting the Commission;
 - b. any other legal practitioner or law clerk attached to the Commission; and
 - c. any other person attached or seconded to the Commission who is authorised by the Chairman to perform the relevant function.
- (2) "expert witness" means a witness who has provided a statement containing opinion evidence in accordance with paragraph 16.
- (3) "final submission": see paragraph 36.
- (4) "initial submission": see paragraph 34.
- (5) "issue" means any of the matters falling within the Terms of Reference of the Commission, or otherwise under investigation or consideration by the Commission.
- (6) "legal practitioner" means a barrister or solicitor who is duly admitted and qualified to practise in Queensland, and who holds a current practising certificate.
- (7) "organization" means any corporation or association, whether incorporated or unincorporated, and includes any board, committee, trade union or professional association.
- (8) "person" means an individual or an organization.
- (9) "public servant" means:
 - a. a public service officer within the meaning of the *Public Sector Employment and Management Act*; or
 - b. a public service officer within the meaning of the *Commonwealth Employment Service Act*, or
 - c. a police officer within the meaning of the *Police Administration Act*.

- (10) “representative” means:
 - a. the representative appearing under paragraph 11 for a person who has been granted leave to appear; or
 - b. the representative appearing under paragraph 12 for a witness.
- (11) “statement”:
 - a. means a written statement of a witness in accordance with paragraph 14; and
 - b. in the case of an expert witness, includes a written report.
- (12) “verified”, in relation to a statement, means verified by Statutory Declaration, or by oath or affirmation, or otherwise as directed by the Chairman.

SCHEDULE II: CONTACT DETAILS

- (1) Physical Address: The Secretary
Bundaberg Hospital Commission of Inquiry
9th Level, Magistrates Court Building
363 George Street
Brisbane Qld 4000
- (2) Postal Address: The Secretary
Bundaberg Hospital Commission of Inquiry
PO Box 13147
George Street Qld 4003
- (3) Email Address: bhci@bhci.qld.gov.au
- (4) Telephone Number: (07) 3109 9150
- (5) Facsimile Number: (07) 3109 9151

SCHEDULE III: FORMAT FOR MATERIAL SUPPLIED ELECTRONICALLY

- (1) Text documents shall be supplied either:
 - a. in Microsoft[®] Word (also known as Word for Windows[®]) format; or
 - b. in a compatible word-processing format; or
 - c. as a document in Adobe[®] Acrobat[®] Portable Document Format (PDF).
- (2) Facsimile or photographic reproductions shall be supplied either:
 - a. as a document in Adobe[®] Acrobat[®] Portable Document Format (PDF); or
 - b. as a BMP, GIF, JPEG, or TIFF image file.

- (3) Material supplied electronically shall be provided either:
 - a. as an email attachment; or
 - b. on a 3½-inch floppy disk; or
 - c. on a CD.

- (4) All material supplied electronically should be screened with a reputable and up-to-date anti-virus programme to ensure that it is free of viruses.