



## **Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales**

### **PRACTICE NOTE 2 – CONDUCT OF PUBLIC HEARINGS**

#### **Legal representation of persons giving evidence at public hearings**

1. The Commissioner may authorise a person giving evidence at a public hearing to be legally represented. Applications to authorise legal representation of witnesses should be made at the relevant hearing date, or such prior occasion as may be appropriate. Prior notice of the application for authorisation, and its stated basis, should be provided in writing to the Solicitor Assisting the Commissioner. See also Practice Note 1.

#### **Conduct of the public hearings**

2. 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 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.
3. The Commission may decide to receive the evidence of a witness orally or in statement form (such as by a statutory declaration). The 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 Commission**

4. All witnesses at a public hearing will be called by Counsel Assisting.
5. Any person wishing to have evidence of a witness or witnesses placed before the Commission is to notify the Senior Counsel Assisting (via the Solicitor Assisting the Commissioner) of the names of such witnesses, and provide a signed statement of their expected evidence (if possible in the form of a statutory declaration) as soon as practicable.
6. 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.

7. Counsel Assisting will determine whether or not to call the witness. An application may be made directly to the Commissioner (via the Solicitor Assisting 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**

8. All witnesses at a public hearing will be called by Counsel Assisting. Typically, Counsel Assisting will call and then examine the witness unless in particular instances Counsel Assisting (or the Commissioner) permits a witness' own legal representative to lead his or her evidence.
9. In the usual case, Counsel Assisting will call and examine the witness. In some circumstances, the witnesses might be examined by more than one of the Counsel Assisting. Subject to the discretion of the Commissioner, the witness may next be cross-examined by or on behalf of any person considered by the 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.
10. 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
  - (c) state whether a contrary affirmative case is to be made in some respect, and if so the details of that case.
11. 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.
12. The Commissioner may:
  - (a) disallow questions posed to witnesses; and
  - (b) ask questions of a witness at any time.
13. 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.

**Evidence to be adduced**

14. The details of the evidence to be adduced to the Commission will generally not be provided in advance of the public hearing to any person who is authorised to appear before the Commission (and will generally not otherwise be published in advance of the public hearing).

**Publication of proposed witness list and hearing hours**

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

**Procedures relating to the tender and inspection of documents**

17. Subject to the control of the Commissioner, Counsel Assisting will determine whether and which documents are to be tendered, and when they will be tendered.
18. Any person wishing to have a document placed before the Commission at a public hearing must notify the 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.
19. Any person (or legal representative of that person) having been granted authorisation to appear before the Commission may request to inspect and copy any book, document or writing tendered in evidence (and not subject to any relevant order restricting publication or access) for the purpose only of appearance before the Commission. 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).
20. Documents and other articles may be tendered to the Commission, by Counsel Assisting, and received into evidence outside formal hearings of the Commission.

**Non-publication orders and closed hearings**

21. 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.
22. 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.

### **Further matters**

23. At the conclusion of the evidence at the public hearings, 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.
24. The Commission reserves the right to vary and/or depart from the above practices from time to time where considered necessary or desirable to do so.

**7 May 2015**