



Abuse in Care

Royal Commission of Inquiry

UNDER

THE INQUIRIES ACT 2013

**IN THE MATTER OF The
Royal Commission into
Historical Abuse in State
Care and in the Care of Faith-
based Institutions**

PRACTICE NOTE 3 – WITNESS STATEMENTS

Dated: 11 June 2020

Introduction

1. If a person has evidence that is relevant to the Inquiry's Terms of Reference they may provide a statement setting out their experience. This Practice Note describes how people engaging with the Inquiry can give a witness statement that will inform the Inquiry's investigations and public hearings.

Who can be a witness?

2. Any person can be a witness. Witnesses can be invited by the Inquiry to provide a statement and give evidence at a public hearing if the inquiry believes they have evidence that is relevant
3. Potential witnesses may be:
 - a. Survivors;
 - b. Family, whanau or friends of survivors;
 - c. Public officials (such as government ministers and civil servants);
 - d. Former or current staff or members of institutions that provided care services;
 - e. Directors and employees of relevant private and public companies, charities and trusts.
4. Any person who believes they might have relevant evidence to provide but is unsure how relevant it is, should contact the Inquiry at: solicitorassisting@abuseincare.org.nz. The Solicitor Assisting, or one of his colleagues, will establish what the evidence is and advise the person how to proceed.

Statement Requests

5. If the Inquiry decides to take a witness statement from a person, the inquiry will send that person a written Statement Request. The Statement Request will contain a description of the matters to be covered by the witness statement. The Statement Request will be sent directly to the witness unless the witness has appointed a qualified lawyer to act on their behalf.

Responding to a Statement Request

6. A witness may draft their own witness statement, seek assistance from a lawyer including from the legal assistance panel, or seek the assistance of the Inquiry Team, or use any combination of these options.

7. If a witness requires assistance from the Inquiry Team in drafting a statement, he or she should contact the Inquiry as soon as possible, and in any event within 14 days of receiving the Statement Request. The witness may seek assistance from the Inquiry Team whether or not he or she is legally represented. The witness should aim to include in the witness statement evidence relating to all matters or issues referred to in the Statement Request. Documents that are relevant to the Inquiry's Terms of Reference may be referred to in the witness statement.
8. The witness statement must be written in the witness's own words and approved by the witness as being complete and accurate using the format set out in Annex A to this statement. The statement must then be signed as final and submitted to the Inquiry within the period specified in the request.
9. Witnesses who are survivors, or those who are making statements in support of survivors (e.g. family, whanau, support persons) will be asked to confirm their consent to the Inquiry disclosing or publishing their witness statement by completing the form set out at Annex B to this statement. Any application for anonymity or a restriction order should be made at the stage the witness statement is submitted to the Inquiry (see paragraphs 12 and 13 below, and the Practice Note on Section 15 Orders – Anonymity and Redactions).

Definitions

- a. "Disclosed" means made available to core participants, those granted leave to appear or in some instances those who the Inquiry proposes to take evidence. Disclosure is made subject to an implied undertaking to the Inquiry of confidentiality by the recipient of the disclosure (and their recognised legal representative), not to reveal the information to others and to use the information only for the purpose of participating in the Inquiry;
- b. "Published" means made available on the Inquiry website, which is accessible by members of the public, or published as part of any interim or final report.

Procedure following receipt of final signed witness statement

10. Once the Inquiry receives a signed statement, it will be uploaded to the Inquiry's database and issued with an Inquiry unique reference number ("URN"). It will not be 'disclosed' or 'published' before the steps outlined below have been taken.

11. The Inquiry regards it as important that its proceedings are conducted in public and in as open and transparent a manner as is possible. The Inquiry will publish on its website the witness statements of those who give oral evidence unless there is a compelling reason not to. In addition, witness statements and their exhibits may be disclosed to core participants and others at the inquiry's discretion.
12. At the stage that the witness statement is submitted to the Inquiry, and before any witness statement is disclosed or published, the witness may ask the Inquiry not to disclose or publish his or her name, or not to disclose or publish particular information contained within the statement.
13. Any person who seeks to prevent disclosure or publication of information contained in their witness statement (including information contained in documents exhibited to the witness statement) should submit an application in accordance with the Practice Note on Section 15 Orders – Anonymity and Redactions (paragraph 14).
14. Any person who seeks anonymity should submit the Consent Form (see Annex B of this Practice Note) with the anonymous box ticked and in line with the procedure set out in the Practice Note on Section 15 Orders – Anonymity and Redactions (paragraph 18).
15. In general, where the witness is a survivor or is making their statement in support of a survivor and requests anonymity, it is likely that the Inquiry will grant requests for anonymity as most of these statements will contain highly sensitive and personal information.
16. Having received the final signed witness statement, the Inquiry will decide whether to invite the witness to attend to give oral evidence in person at an Inquiry hearing. An invitation or a summons to attend to give oral evidence will ordinarily be issued not less than 4 weeks before the date on which the witness will be asked to attend.

Procedure where a witness fails to respond to a Statement Request

17. The Inquiry has the power to obtain information from individuals or organisations under section 20 of the Act. Should a witness refuse to respond to a Statement Request, the Inquiry may use section 20 to force that person to give a witness statement. The Act also enables the Inquiry to summon a witness to attend and give evidence at a public hearing pursuant to section 23.

18. A person may claim that they are unable to comply with the Notice or that it is not reasonable in all the circumstances for them to comply with such a Notice. The Inquiry will determine any such claim and may revoke or vary a Notice on the ground claimed. In doing so the Inquiry will have regard to the public interest in the information in question being obtained by the Inquiry having regard to its likely importance to its Terms of Reference.

Produced by:

**The Royal Commission of Inquiry into Historical Abuse in
State Care and in the Care of Faith-based Institutions**

PO Box 10071
The Terrace
WELLINGTON 6143



Signed: Judge Coral Shaw
Chair

Dated: 11 June 2020

Annex A

1. Witness statements submitted to the Inquiry should be provided electronically where possible, designed to be printed on single-sided A4, and unless an alternative template is provided by the Inquiry, in accordance with the template appended to this annex (Arial font, size 12, line spacing of 1.5 and default Word settings for header, footer and margins).
2. They should also comply with the following requirements:
 - a. Each page should be numbered sequentially and each paragraph (other than those dealing with the matters set out in paragraphs (b) and (c) below) should be numbered sequentially from the beginning to the end of the witness statement.
 - b. A witness statement should commence by setting out the witness's full name. In the case of a witness who is giving evidence in relation to their current or former occupational capacity, the statement should indicate the name of the employing organisation, and the witness's current or former position or role within that organisation.
 - c. Each witness must sign and date his or her statement under the following endorsement:

"This statement is true to the best of my knowledge and belief and was made by me knowing that it may be used as evidence by the Royal Commission of Inquiry into Abuse in Care."
 - d. A witness who is giving evidence in a private capacity need not include their home address in the body of the witness statement, provided that address has previously been notified in writing to the Inquiry.
 - e. The Inquiry will allocate each witness a unique four-digit identifier which will be provided in any Statement Request issued by the Inquiry.
 - f. The "Statement No:" to be included in the header of each statement should be in the following format "WITNXXXX001", where XXXX is the unique identifier issued by the Inquiry.
 - g. Where a witness wishes to refer to a document or material during the course of a witness statement the following procedures should be adopted:

- i. A copy of such document or material must be submitted with the witness statement as an exhibit, unless it is known that the document or material is already held on the Inquiry's database in which circumstance the document should where possible be identified in the witness statement by its unique reference number ("URN");
- ii. Where exhibits are submitted alongside a witness statement (and are not available on the Inquiry's database), they should be given sequential numbers following the format outlined at (5) above. The first exhibit to the statement should be referred to as "WITNXXXX002", and subsequent exhibits will continue in sequential order;
- iii. Whenever a document is referred to in a witness statement the full title or description of the document should be given on the first occasion reference is made to it (thereafter an abbreviation will be sufficient). This should be followed by square brackets in which the exhibit number, as described at paragraphs (a) or (b) above, is placed.
- iv. Exhibits should be referenced in the header of the witness statement alongside "Exhibits:". The information to be included will depend on the number and nature of the exhibits to the statement; for example:
 - WITNXXXX002
 - WITNXXXX002 – WITNXXXX004
- v. Where a witness makes a second or further supplementary witness statement that fact should be stated at the outset in the heading (e.g. SECOND/THIRD/FOURTH WITNESS STATEMENT OF...). The numbering of second or further supplementary statements and their exhibits should be sequential, for example, if the URN of the final exhibit to the first statement was WITNXXXX004, then the URN of the second statement will be WITNXXXX005, and the first exhibit to the second statement will be WITNXXXX006, and so on.
- vi. The statement should end with confirmation that the facts stated in the witness statement are true, the signature of the witness, and the date signed.

Template for witness statements

Witness Name: XXXXXXXX

Statement No.: [WITNXXXX001]

Exhibits: [WITNXXXX002 - WITNXXXX004]

Dated: dd.mm.yyyy

ROYAL COMMISSION OF INQUIRY INTO ABUSE IN CARE

[SECOND / THIRD / FOURTH ...] WITNESS STATEMENT OF [*]**

I, [***], will say as follows: -

1.

2.

3. Etc

Statement of Truth

This statement is true to the best of my knowledge and belief and was made by me knowing that it may be used as evidence by the Royal Commission of Inquiry into Abuse in Care.

Signed _____

Dated:

Annex B

Consent to use my statement

I, [] (insert name) confirm that by submitting my signed witness statement to the Royal Commission of Inquiry into Abuse in Care, I consent to its use in the following ways:

- publication on the Inquiry website;
- reference and/or inclusion in any interim and/or final report;
- disclosure to those granted leave to appear, designated as core participants and where instructed, their legal representatives via the Inquiry’s database or by any other means as directed by the Inquiry;
- presentation as evidence before the Inquiry, including at a public hearing;
- informing further investigation by the Inquiry.

I also confirm that I have been advised of the option to seek anonymity and that if granted my identity may nevertheless be disclosed to a person or organisation, including any instructed legal representatives, who is the subject of criticism in my witness statement in order that they are afforded a fair opportunity to respond to the criticism.

Please tick this box if you are seeking anonymity

Signed.....

Date.....