



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 4 – SECTION 15 ORDERS – ANONYMITY AND REDACTIONS

Dated: 11 June 2020

Introduction

1. This Practice Note sets out how the Inquiry will approach the redaction of information from documents or any other evidence received in the course of its investigations and from those participating with the Inquiry pursuant to section 15 of the Inquiries Act 2013 (“the Act”).
2. It is not intended to be an exhaustive list of every possible eventuality that may arise but will state the principles and general procedure that will be adopted. Where the interests of justice and fairness require it, the Inquiry may need to depart from this Practice Note and reserves the right to do so. In order to operate effectively and efficiently, the Inquiry needs to maintain an element of flexibility so that procedures can be adopted or adapted according to its needs.

Definitions

“**Evidence Provider**”: any person, institution or organisation that has given evidence or information to the Inquiry.

“**Redaction**”: the removal of text or other content from evidence or other information, usually by blacking out words.

“**Disclosure**”: the making available of relevant evidence or other information (collectively **material**) to core participants or those granted leave to appear as determined by the Inquiry, and in some instances, persons from whom the Inquiry intends to take evidence.

“**Publication**”: the process of making available evidence or information on the Inquiry website or any other method or platform (including by way of an interim or final report) which is accessible by members of the public.

“**Restriction Order**”: an order made under section 15 of the Act which restricts public access to or prohibits disclosure of evidence or information however held when disclosed or made public.

“**Anonymity**”: the protection of a person’s identity from disclosure and/or publication.

“**Evidence**”: any information of any description, however held in paper, electronic or any other format, to include, but not be limited to witness statements, affidavits, reports, reviews, minutes, governing/corporate documents, legislation, any correspondence, content from any website, guides or codes of conduct, policy documents, articles, any recording made visually or audibly, and any other physically held evidence.

Confidentiality of Disclosure

3. Other than publicly available material, any material disclosed by the Inquiry to any person or organisation is done so subject to an implied undertaking to the Inquiry of confidentiality by the recipient of the disclosure (to include their legal representative if so instructed) not to reveal the whole or any part of that material, or any information contained within it, to any other person by any means without prior permission of the Inquiry, and that such material will be used only for the purposes of preparation for or participation in the Inquiry. Legal representatives must advise their clients who will have access to this information of the implied undertakings and the consequences of breaching them. Any intentional breach of the implied undertaking is an offence under s 29 of the Act and may also constitute contempt.

Section 15 Restriction Orders

4. It is important that the Inquiry's proceedings are conducted in a public and transparent way. The Inquiry will publish certain evidence on its website that is heard in hearings including documents referred to in the course of that hearing, unless there is a compelling reason not to do so. Further, evidence will be disclosed to core participants and, in some instances, persons from whom the Inquiry intends to take evidence by making it available in the Inquiry's document disclosure system and through any other means where appropriate.
5. Despite the Inquiry's commitment to transparency, the Inquiry will sometimes make orders when it is necessary or appropriate to keep information private. Such orders are known as restriction orders and are made in accordance with section 15 of the Act.
6. Section 15(2) of the Act sets out mandatory criteria the Inquiry must consider before making any restriction orders.
7. Material provided to the Inquiry must be submitted in unredacted form. Everyone must comply with a restriction order, including those in the media, members of the public, witnesses, core participants, legal representatives and members of the Inquiry.
8. Under section 29(1)(e) of the Act, it is an offence to fail to comply with an order under section 15(1).
9. Restriction orders will continue in force unless and until they are amended or cancelled. It is possible to apply to amend or cancel an existing restriction order that affects you. The Inquiry can decide to amend or cancel a restriction order without an application having been made if it considers it necessary to do so.

Redactions

10. In order to give a section 15 order effect, the Inquiry will use redactions to remove certain words from documents.
11. The purpose of making redactions is to protect the identities of people where anonymity is sought, or considered necessary by the Inquiry, and to protect the personal or confidential information of others. Redactions may also be appropriate to exclude evidence that is not relevant to the Inquiry's Terms of Reference, or in respect of information over which privilege is claimed.
12. Where a person submits evidence or other information to the Inquiry, or where the Inquiry gathers the evidence independently, the evidence will be reviewed by the Inquiry team for relevance. Where the evidence is assessed as being relevant to the Terms of Reference, the Inquiry may disclose the evidence to core participants and those granted leave to appear and, in some instances, to other witnesses where necessary.
13. Before such evidence is disclosed or published, the evidence provider may apply to the Inquiry for a restriction order preventing such disclosure or publication of any part of that evidence as per section 15. The evidence provider will be notified when the Inquiry intends to disclose or publish that evidence and will be given the opportunity to apply for a restriction order within 14 days of disclosure unless an alternative timeframe or process is reasonable and necessary.

Procedure for applying for a Restriction Order

14. Once the evidence provider is advised that their evidence is to be disclosed or published, they should make an application for a restriction order, if desired, in the following terms:
 - a. A written application setting out the reasons in each case for the sought redactions pursuant to section 15 of the Act.
 - b. An unredacted version of the evidence.
 - c. A version of the evidence with proposed redactions in transparent grey.

15. The Inquiry will determine each application and allow the evidence provider to submit written objections to the initial determination. Following consideration of those objections, a final determination will then be issued. In the absence of written objections the initial determination will become final after 7 days. At the discretion of the Inquiry, it may be necessary to adopt a different approach should time constraints require.

Anonymity

16. The purpose of anonymity is to protect the identities of people by excluding identifying information in appropriate cases. When redacting to protect a person's identity, the Inquiry will remove the following information from all evidence unless it is considered to be necessary for the purpose of fulfilling the Terms of Reference:

- Name;
- Date of birth;
- Addresses and contact details;
- Names of family members, their addresses and contact details;
- Identifying information from a person's medical history and/or medical records;
- Any other identifying information.

17. Decisions as to what redactions need to be made will be made by the Inquiry on a case by case basis and the particular circumstances of the applicant.

Procedure for applying for anonymity

18. Any person who wishes to apply for anonymity should do so by ticking the anonymity box in the Consent Form (found at Annex B of the Inquiry's Practice Note – Witness Statements) when submitting evidence, whether that be a written statement, documents that are relevant to their experience or any other information. A decision will then be made by the Inquiry and notice given to the applicant. The Inquiry will then make the necessary redactions in line with paragraph 16 above.

19. If a witness who is granted anonymity submits a written statement that contains criticism of another person or organisation, it may be appropriate to disclose the identity of that witness (on a confidential basis) to the person or organisation that they have criticised. This may be necessary in order that the criticised person or organisation are afforded a fair opportunity to respond to the criticism. Anyone to whom the identity of an anonymous witness is disclosed must keep that information confidential and must not disclose the information to any other person. The Inquiry will provide at least 14 days' notice to the anonymous witness should it intend to disclose that person's identity to the person or organisation who are criticised so as to allow that anonymous witness an opportunity to make representations requesting that the Inquiry not disclose their identity.
20. All evidence disclosed to core participants, those granted leave to appear, or any intended witnesses, will be done so with redactions applied in respect of identifying information of a witness who has been granted anonymity.
21. A witness who seeks to prevent disclosure or publication of information contained in their evidence other than for reasons of anonymity should submit an application for a restriction order in accordance with section 15 of the Act and as set out in paragraph 14 above.

Produced by:

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Signed: Judge Coral Shaw
Chair

Dated: 11 June 2020