



Abuse in Care

Royal Commission of Inquiry

UNDER

THE INQUIRIES ACT 2013

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

PRACTICE NOTE 6 – PUBLIC HEARINGS

Dated: 2 September 2020

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SECTION 1 - INTRODUCTION

1. The Royal Commission of Inquiry (“the Inquiry”) has launched a series of investigations into topics in its Terms of Reference. Investigations will gather evidence in a number of ways including through public hearings. This Practice Note sets out the Inquiry’s procedures relating to public hearings. It should be read together with the Inquiry’s other practice notes, the General Section 15 Restriction Order re-issued on 2 September 2020, and s 14 of the Inquiries Act 2013 (“the Act”).
2. From time to time the Inquiry may make further directions relating to public hearings, if required.
3. Most of the Inquiry’s public hearings will be held in its hearing centre located at 414 Khyber Pass, Newmarket, Auckland. When a public hearing is to be held elsewhere, for example on a marae, the Inquiry will consult with mana whenua and will notify the public and participants of the hearing location via its website: www.abuseincare.org.nz
4. Public hearings will be held in two sessions per day. The morning session will usually run from 10am to 1pm, with a break for morning tea during the session. The afternoon session will usually run from 2pm to 5pm, with a break for afternoon tea during the session. These times may be subject to change at the direction of the Chair.

SECTION 2 – APPLICATIONS FOR LEAVE TO APPEAR AT A PUBLIC HEARING

5. This section replaces the directions in the Inquiry’s Minute 1 dated 2 July 2019 relating to applications for leave to appear at a public hearing.

What is leave to appear?

6. Public hearings are open to members of the public who want to attend in person and observe the Inquiry’s work, and are also streamed via the Inquiry’s website. For individuals or groups who want to participate in a public hearing in a more formal way, an application for leave to appear at the hearing is required.
7. Being granted leave to appear at a particular public hearing means the person or group may be represented by a lawyer at the hearing, may have evidence disclosed to them prior to the hearing to enable them to participate effectively, may seek permission to question witnesses, and may be consulted on procedural matters.
8. The Inquiry will decide applications to formally appear at any public hearing by assessing relevance to the matters to be examined at the hearing, the extent to which the applicant may participate, natural justice principles, and the need to avoid unnecessary delay or cost.
9. A person or group already designated as a core participant to an investigation under the process described in [Practice Note 2 – Core Participants](#), must still apply for leave to appear at hearings considered to be relevant to their interests. It may not be necessary or appropriate for every core participant to appear at every public hearing.

When and how to apply

10. Public hearing dates will be published on the Inquiry’s website, along with a scope document describing the matters likely to be examined at the public hearing.

11. Applications for leave to appear at a hearing should be made as early as possible but within four weeks of the commencement of a scheduled public hearing, unless another timeframe is notified.
12. Applications should be made in writing to solicitorassisting@abuseincare.org.nz setting out the applicant's reasons for applying, which may include:
 - (a) The significance to the applicant of matters to be examined at the hearing;
 - (b) Whether the applicant has relevant evidence on the matters to be examined;
 - (c) Where applicable, the number of witnesses able to give evidence on those matters;
 - (d) Natural justice considerations if leave to appear is not granted.
13. The Inquiry will determine applications for leave to appear as soon as practicable.
14. Leave to appear at a hearing may be granted subject to conditions, and can be withdrawn by the Inquiry.

SECTION 3 – FILING AND DISCLOSURE OF WITNESS STATEMENTS RELEVANT TO PUBLIC HEARINGS

15. [Practice Note 3 – Witness Statements](#) sets out how participants can provide witness statements¹ to the Inquiry to inform its investigations and public hearings.
16. All witness statements filed with the Inquiry must comply with the requirements in Practice Note 3 and its annexures, and [Practice Note 4 – Section 15 Orders: Anonymity and Redactions](#).
17. Prior to any scheduled public hearing the Inquiry will make directions on the dates for filing of witness statements relevant to it. Witness statements can be filed by core participants to the investigation, those granted leave to appear at the hearing, and other witnesses with evidence relevant to the scope of the hearing.
18. The Inquiry will disclose the witness statements to core participants to the investigation, those granted leave to appear at the hearing, and any other person where disclosure is necessary for effective participation in the public hearing. Disclosed witness statements will be redacted where necessary to comply with the General Restriction Order and any other orders made under s 15 of the Act.
19. As set out in Practice Note 3, disclosure of witness statements is made subject to an implied undertaking to the Inquiry of confidentiality, by the recipient and their lawyer/s, not to reveal or publish the information to others, and to use the information only for the purpose of participating in the Inquiry.
20. Any other person who receives a witness statement in breach of the above undertaking of confidentiality must not further reveal, publish or use the witness statement.
21. Any breach of the undertaking of confidentiality by a recipient and/or their legal representative or by any unauthorised recipient will be considered by the Inquiry to be a failure to comply with

¹ Witness statement in this Practice Note includes supporting documents and material annexed or exhibited to the statement

a procedural direction and, if intentional, may constitute an offence under s 29(1)(e) of the Inquiries Act 2013 (the Act).

22. Subject to any orders for anonymity and/or redaction made under s 15 of the Act, the undertaking of confidentiality ends only on the public release by the Inquiry of a witness statement on its website or publication as part of any interim or final report.

SECTION 4 – SUPPLEMENTARY EVIDENCE

23. The Inquiry may direct supplementary evidence be filed, or participants may make an application for permission to file supplementary evidence. Supplementary evidence must be in response to specific matters already set out in evidence filed and is not a mechanism to submit general or new evidence unless otherwise directed by the Inquiry.
24. An application for permission to file supplementary evidence must:
 - (a) be made within 10 working days of disclosure of the witness statement/s to the applicant;
 - (b) be accompanied by a statement of the intended supplementary evidence;
 - (c) set out:
 - i. why the disclosed witness statement/s may adversely affect the interests of the applicant if supplementary evidence is not received; and/or
 - ii. that receiving supplementary evidence is otherwise in the interests of justice.
25. The Inquiry will determine applications for permission to file supplementary evidence within 7 working days of receipt. If permission is granted to a participant to file supplementary evidence, any further witness statement/s must be filed with the Inquiry within 10 working days of permission being granted, or by some other specified date.
26. In exceptional circumstances, including where an evidence statement has been disclosed shortly before a hearing, an application can be made to shorten these timeframes.
27. The Inquiry will disclose supplementary evidence to core participants to the investigation, those granted leave to appear at the hearing, and any other person where disclosure is necessary for effective participation in the public hearing. Disclosure will be subject to the General Restriction Order and any other orders made under s 15 of the Act.

SECTION 5 – SELECTION OF WITNESSES FOR HEARINGS

28. The Inquiry will decide the witnesses to be called to give oral evidence at a public hearing. All witness statements received by the Inquiry during an investigation will be part of the evidence considered, but not all witnesses who have filed witness statements will necessarily be called to give oral evidence at a hearing.
29. Participants who have filed witness statement/s, including core participants and those granted leave to appear, who believe that a particular witness (including themselves, if an individual) should be called to give oral evidence at the public hearing, should make a request in writing to the Inquiry at the time the witness statement is filed setting out:

- (a) The reasons why the witness should give oral evidence at the public hearing; and
 - (b) The parts of the witness statement the request relates to; and
 - (c) An estimate of the time required for the oral evidence; and
 - (d) Any request to give oral evidence in an alternative way, including by AVL from an appropriate place outside the hearing room.
30. In deciding whether a witness should be called to give oral evidence at a public hearing the Inquiry may consider the significance of part or all of a witness's evidence, whether the evidence appears to be inconsistent with other evidence the Inquiry has received, whether evidence may adversely affect the interests of anyone, participation of Māori in accordance with Te Tiriti o Waitangi, participation of disproportionately represented groups, the available hearing time, and any other relevant matters.
31. On deciding that a witness will be called to give oral evidence at a hearing, the Inquiry will make directions on the nature and extent of the witness's evidence that is to be given orally. A witness may not be required to give oral evidence on all matters in their statement.

SECTION 6 – QUESTIONING OF WITNESSES

32. Where a witness is called to give oral evidence at a public hearing their evidence will be led by the lawyer who represents the witness, or the lawyer for the participant who filed the witness's statement. In all other cases, a witness's evidence will be led by Counsel Assisting the Inquiry.
33. Counsel Assisting may question all witnesses. Lawyers for participants may suggest lines of questioning to Counsel Assisting and should do so in writing. Additional questioning of witnesses by lawyers for other participants will only be permitted if the Inquiry gives permission. Exceptional reasons will be required if the application is to question a witness who is a victim or survivor of abuse.
34. Applications should be made in writing to solicitorassisting@abuseincare.org.nz as soon as possible but no later than 10 working days before the beginning of the public hearing and must set out:
- (a) The proposed area/s of questioning; and
 - (b) The estimated time required for questioning; and
 - (c) If the witness is a survivor, exceptional reasons why the questions could not be asked by Counsel Assisting.
35. The Inquiry will determine written applications for leave to question and notify its decisions as soon as practicable.
36. This process does not exclude participants making oral applications to the Chair during a hearing for leave to question witnesses, but this is not encouraged given the limited hearing time available.

SECTION 7 – DOCUMENT HEARING BUNDLES

37. The Inquiry may collate a bundle of documents for electronic use at the hearing via the Inquiry's Trial Director software, including witness statements, exhibits and any other relevant evidence that the Inquiry chooses to include.
38. Participants may request documents to be included in this hearing bundle but requests should be made at least four weeks prior to the hearing. Documents can be added to the hearing bundle later in exceptional circumstances if relevance was not foreseen, but advance notice to the Inquiry is important because of the need to ensure that un-redacted documents are not streamed to the public when restrictions are in place.
39. The hearing bundle may be disclosed in advance of a public hearing to core participants to the investigation, those granted leave to appear at the hearing, and any other person where disclosure is necessary for effective participation in the public hearing. Documents contained in hearing bundles will be subject to the General Restriction Order and any other orders made under s 15 of the Act.

SECTION 8 – PROCEDURAL MATTERS

40. The Inquiry does not intend to hold procedural hearings as a matter of course prior to every public hearing unless there is good reason to do so that could not be adequately addressed by consideration of written submissions.
41. Counsel for a participant, or a participant in person if not represented by a lawyer, who has a procedural question or issue relating to hearings should raise it in writing in the first instance with Counsel Assisting the Inquiry, identifying the issue and setting out the contentions and the outcome sought. Such issues should be raised as soon as they arise by email to: counselassisting@abuseincare.org.nz
42. If necessary Counsel Assisting will make inquiries of other counsel/participants on procedural issues and, where possible, resolve issues on mutually acceptable terms agreed in writing.
43. If resolution of a procedural issue cannot be reached between counsel, the Chair will, having regard to the need to avoid unnecessary delay or cost and complying with the rules of natural justice, issue a ruling:
 - (a) After considering the matter on the papers, if the Chair considers it appropriate; or
 - (b) After hearing oral submissions from counsel at a procedural hearing, or during a public hearing.
44. Prior to each public hearing the Inquiry will issue a Minute to participants which may include timetabling directions, notification of decisions on applications and requests, and procedural rulings where appropriate.

SECTION 9 – HEARING PLAN

45. The Inquiry will publish a hearing plan on its website and distribute it to participants as soon as practicable prior to the hearing, after written applications for leave to question witnesses at the hearing have been received.

46. The hearing plan will set out the timetable for witnesses giving oral evidence. It may include time limits on the questioning of witnesses, and other arrangements for the hearing.

SECTION 10 – CONDUCT OF HEARINGS

47. The Inquiry’s public hearings will commence on the first sitting day with mihi whakatau. The Inquiry will consult with mana whenua in the preparation and delivery of mihi whakatau for each hearing.
48. Other hearing days may open and close with karakia and waiata.
49. Counsel Assisting the Inquiry, lawyers appearing for participants and participants who have leave to appear at the hearing will then be invited to introduce themselves to Commissioners. The Inquiry welcomes the use of te reo Māori, languages of the Pacific and other indigenous languages in announcing appearances and making introductions.
50. Counsel Assisting may then make an opening statement addressing relevant matters including the topics or issues to be examined in the course of the hearing, the witnesses to be called, and procedural matters.
51. The Inquiry will not ordinarily require opening statements from participants unless permission is granted by the Chair.
52. The hearing will proceed with witnesses being called to give oral evidence on oath or affirmation.
53. Oral closing statements or submissions are not required from Counsel Assisting or participants at the end of a public hearing, unless permitted or directed by the Chair.
54. The last sitting day of each public hearing will close with mihimihi, waiata and karakia.

SECTION 11 – TE REO AND TIKANGA MĀORI

55. The Inquiry welcomes the use of te reo Māori in all aspects of its public hearings. The Inquiry also acknowledges the important link between te reo Māori and tikanga Māori.
56. Some witnesses or participants may wish to give evidence or engage in a public hearing solely in te reo Māori. This is welcomed and is provided for below.
57. It is also acknowledged that other witnesses or participants may wish to give evidence or participate primarily in English, but may wish to incorporate te reo and tikanga Māori in the process of the hearing (for example, mihi, pepeha, kupu Māori, whakataukī, waiata/haka tautoko), or otherwise engaging in the public hearing. This is also welcomed. To ensure that the Inquiry can respond appropriately where necessary, we encourage participants to signal such matters to Counsel Assisting the Inquiry in advance of the public hearing.
58. In accordance with the Māori Language Act 2016, the Inquiry will provide te reo Māori interpretation for participants that wish to give evidence or otherwise engage in proceedings solely in te reo Māori.²

² Interpretation as defined in s 7(7) of the Māori Language Act 2016.

59. To ensure appropriate interpretation arrangements are made, notice must be given to the Inquiry in writing to solicitorassisting@abuseincare.org.nz as soon as possible but no later than 10 working days before the beginning of the hearing.
60. In-hearing interpretation of English into te reo Māori will also be available on request to participants. Requests should be made in writing to solicitorassisting@abuseincare.org.nz as soon as possible but no later than 10 working days before the beginning of the hearing.

SECTION 12 – PACIFIC LANGUAGES

61. Pacific language interpretation services will be provided for public hearings where requested by a participant who wishes to give evidence solely in their language. A request for oral interpretation at a hearing must be made in writing to solicitorassisting@abuseincare.org.nz as soon as possible but no later than 10 working days before the beginning of the hearing.

SECTION 13 – SIGN LANGUAGE

62. All public hearings will have New Zealand Sign Language interpretation.

SECTION 14 – STREAMING AND PUBLICATION OF EVIDENCE

63. Hearings will be streamed via the Inquiry’s website to enable the New Zealand public who cannot attend hearings in person to be able to watch remotely. There will be a five-minute delay to ensure that any issues that may arise regarding s 15 restriction and anonymity orders can be addressed, and where this occurs footage may be edited.
64. After a witness has given oral evidence at a hearing, their written witness statement/s will be published on the Inquiry’s website subject to any s 15 restriction and anonymity orders.
65. Oral evidence given at a hearing primarily in te reo Māori or any other language will be interpreted into English and this will form part of the official transcript. A draft transcript will be distributed to counsel as soon as practicable, and final transcripts will be published on the Inquiry’s website once available.
66. Where any question arises as to the accuracy of any interpreting from Māori into English or from English into Māori, the question shall be determined by the Chair in such manner as the Chair thinks fit.³

SECTION 15 – CLOSED SITTINGS

67. The Inquiry recognises that in rare circumstances oral evidence intended to be given by a witness at a hearing may be of such sensitivity that it should not be heard publicly, even if s 15 anonymity and redaction orders are made. In such circumstances, the Inquiry may direct the witness’s oral evidence be given in a closed sitting.
68. A closed sitting will proceed in the presence only of Commissioners and any other person permitted by the Chair.
69. Oral evidence given in a closed sitting will not be streamed to the public or published in full on the Inquiry’s website. A summary of the evidence may be published at the Inquiry’s discretion.

³ Section 7(4) Māori Language Act 2016

Produced by:

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Signed: Judge Coral Shaw
Chair

Dated: 2 September 2020