

## Practice Guideline No. 1

### *Providing information, seeking leave to appear, conduct of public hearings, communicating with the Board, witness statements and confidentiality requests*

#### **Part A. Providing information to assist the inquiry**

1. The Board of Inquiry (“the Board”) invites any person with information relevant to the inquiry’s Terms of Reference (available [here](#)) to submit that material to the Board by 26 June 2020.
2. The material is to be provided, in writing, by email or post.
3. If the material is to be emailed, it can be sent to the Executive Director at [info@coalminesinquiry.qld.gov.au](mailto:info@coalminesinquiry.qld.gov.au).
4. If the material is to be posted, it can be sent to

Executive Director  
Queensland Coal Mining Board of Inquiry  
GPO Box 1321  
Brisbane QLD 4001

#### **Part B. Leave to appear at public hearings**

5. The Board will hold public hearings as part of the inquiry. This part deals with applications for leave to appear at public hearings.
6. By applying for leave to appear at public hearings, a person is asking permission to present evidence or ask questions of a witness, or present arguments/submissions about the evidence. If a person is granted leave to appear at public hearings, that person must comply with all terms of Practice Guideline No.1, including any amended terms.
7. “Leave to appear” is not to be confused with attending public hearings of the Inquiry as an observer. Subject to social distancing obligations, any person is permitted to attend and observe the public hearings.

#### People who do not need to seek leave to appear at public hearings

8. A person given notice by the Chairperson of the Board (“the Chairperson”) pursuant to section 207 of the *Coal Mining Safety and Health Act 1999* (“the Act”) does not need to seek leave to appear.

9. A person given an attendance notice by the Chairperson pursuant to section 213 of the Act does not need to seek leave to appear whilst giving evidence in compliance with the attendance notice.
10. A person giving evidence at the public hearings in compliance with an attendance notice may be represented by a lawyer or agent.

#### People who do need to seek leave to appear at public hearings

11. A person who has not received a notice pursuant to section 207 of the Act or an attendance notice pursuant to section 213 of the Act but who wants to appear at public hearings will require the leave of the Chairperson to do so.
12. A person who is given leave to appear at the public hearings may be represented by a lawyer or agent.

#### How to apply for leave to appear at public hearings

13. A person seeking leave to appear at public hearings should send a brief written application by email to the Executive Director at [board@coalminesinquiry.qld.gov.au](mailto:board@coalminesinquiry.qld.gov.au) as soon as possible, but no later than 4.00PM 3 July 2020.
14. The application for leave to appear should identify:
  - (a) the name of the person wanting leave to appear and an email address and contact telephone number for that person;
  - (b) the parts of the Terms of Reference in which the person is interested or in respect of which their interests may be materially affected by the inquiry and the grounds on which those interests exist or may be materially affected;
  - (c) the parts of the Terms of Reference in which the person has particular knowledge or expertise enabling that person to assist the inquiry, together with the sources of that knowledge and the extent of that expertise;
  - (d) the subject matter of any submissions the person proposes to make.
15. Leave to appear may be determined on the basis of the material contained in the application. In such cases, the person seeking leave to appear will receive written notification that their application has been granted or refused.
16. In some cases, the Chairperson may require further information about why the application for leave to appear should be granted. In such cases, the person seeking leave to appear will receive written notification that further written information is required or that the application will be heard and considered at the commencement of the public hearings, or at some other specified time.

17. Nothing in this Guideline prevents a person from seeking leave to appear at any time after the public hearings have commenced. If a person wants to seek leave to appear after the public hearings have commenced, the person should contact the Executive Director on 0475 985 817 to arrange for their application to be received and considered.

#### Leave to appear may be subject to conditions

18. Leave to appear may, in the Chairperson's discretion, be limited by conditions including conditions that:
  - (a) the evidence sought to be adduced or tendered by the person must be in the form of a witness statement provided to counsel assisting the inquiry in advance of the public hearings; and
  - (b) examination of any witness or witnesses, or the making of submissions, be restricted to a particular topic or topics.
19. Any leave to appear may be varied or withdrawn or made subject to additional conditions at any time in the discretion of the Chairperson.

### **Part C. Conduct of Public Hearings**

20. The Board may direct that certain hearings, or parts of a particular hearing, be held in private. In all other cases, the hearings will be open to the public and live-streamed via the Board's website.

#### Initial public hearing

21. The Board will convene an initial public hearing in due course:
  - (a) the Chairperson and counsel assisting will make general introductory remarks concerning the nature and scope of the inquiry;
  - (b) applications for leave to appear at public hearings which have not already been determined will be heard and considered; and
  - (c) information about the conduct of the inquiry, including likely public hearing dates, will be provided.

#### Public hearings generally

22. The procedure to be followed at the public hearings will be subject to the direction of the Chairperson.

23. Generally, and subject to the Chairperson's discretion:
- (a) all witnesses giving evidence at the public hearings will be called and examined by counsel assisting the inquiry. A witness' examination-in-chief will usually involve the tendering of a statement provided by the witness to counsel assisting in advance of the hearing. In some cases, the witness' examination-in-chief may be taken orally;
  - (b) the order of further examination of each witness will usually be:
    - i. examination by the parties given leave to appear;
    - ii. examination by the lawyer or agent (if any) representing the witness; and
    - iii. re-examination by counsel assisting.
24. The Chairperson may limit the issues about which a witness may be examined and limit the time available for examination by any person.
25. At the completion of the examination of a witness, the witness shall, unless excused from further attendance, be taken to have been stood down only and to be subject to recall at the direction of the Chairperson.

#### **Part D. Communicating with the Board**

26. The Board will provide general notice of procedural matters via the Board's website.
27. Any person communicating with the Board should do so initially by email to the Executive Director at [board@coalminesinquiry.qld.gov.au](mailto:board@coalminesinquiry.qld.gov.au).
28. Unless otherwise specified by the Board, submission of any electronic documents (including witness statements and their exhibits, submissions, and all other information) to the Board is to be in accordance with the Document Management Protocol published on the Board's website.
29. Where possible, all written material submitted to the Board should be in fully text-searchable, multi-page PDF/A format.
30. ***[Paragraph number not used]***
31. If any person is unable to provide their written material to the Board in that way, alternative arrangements can be made by telephoning the Executive Director on 0475 985 817.

## **Part E. Witness statements**

32. Where possible, any person who gives evidence at a public hearing should first provide a witness statement to counsel assisting the inquiry.
33. Where possible, witness statements should be in the form of an affidavit or statutory declaration.
34. Witness statements:
  - (a) should clearly and concisely set out the relevant evidence the witness can give;
  - (b) must contain only statements of factual matters within the direct knowledge of the witness, unless (c) or (d) apply;
    - (a) may contain statements of factual matters of which the witness has been informed, or believes, if the source of the information or the basis for the belief is clearly identified in the witness statement;
    - (b) may contain statements of opinion, provided the witness possesses specialised knowledge in a field relevant to the inquiry and attaches a copy of his or her curriculum vitae to the statement;
  - (c) must have exhibited to them (by attachment or accompanying presentation) all documents or true copies of documents relating to the evidence given by the witness which are in the witness's possession or control, or describe as precisely as possible any such documents which are not in the witness's possession or control and, in that case, state where the witness believes the documents to be located;
  - (d) must present those exhibits in a way that will facilitate the Board's efficient and expeditious reference to them, and in particular –
    - i. where possible, in electronic form, by providing them in fully text-searchable, multi-page PDF/A format;
    - ii. alternatively, with respect to hard copies, by placing a letter, number or other identifying mark on each exhibit and numbering the pages.
35. ***[Paragraph number not used]***

36. Following receipt of a witness's primary statement, the Board may request the witness to:
- (a) attend an interview with counsel assisting the inquiry to discuss the statement; and/or
  - (b) ***[Paragraph number not used]***
  - (c) provide a supplementary statement.
37. If the person attends an interview with counsel assisting, the person may be represented by a lawyer or agent.

#### **Part F. Publication and confidentiality**

38. Subject to the Chairperson's determination of any application for confidentiality, all information, witness statements (including attachments), documents or submissions provided to the Board may be published on the Board's website or otherwise made publicly available.
39. Any person who provides a witness statement or any other information to the Board, and who wishes to apply for confidentiality or non-publication orders in relation to the fact of the material being provided or in relation to the whole or any part of the material should:
- (a) if it is considered necessary to make any such order *before* providing any material, contact the Executive Director by email at [board@coalminesinquiry.qld.gov.au](mailto:board@coalminesinquiry.qld.gov.au) to discuss arrangements; or
  - (b) provide the material to the Board under cover of a written notice stating:
    - i. the part of the information or material in respect of which confidentiality is sought;
    - ii. whether confidentiality is sought in respect of the world at large or subject to acceptance of publication to some person or categories of persons; and
    - iii. the grounds on which such confidentiality is asserted to be necessary and appropriate despite the public nature of the inquiry.
40. ***[Paragraph number not used]***

41. Where confidentiality is applied for in relation to material provided to the Board, either:
- (a) the Chairperson shall decide the application on the papers and notify the person or their nominated representative accordingly. If confidentiality is refused, the material or information in question will nevertheless be kept confidential for seven days from notification of the decision; or
  - (c) the Board shall notify the person or their nominated representative that they will be required to appear before the Chairperson on a date to be advised for further consideration of the application. The material or information in question will be kept confidential until (and in accordance with) the Chairperson's decision following that appearance.
42. Nothing in this Guideline should be taken as limiting the Chairperson's powers, whether at the request of any person or on his own initiative, to treat any material or information as confidential and to take any steps appropriate for the preservation of that confidentiality

**TERRY MARTIN SC**

Chairperson and Board Member

9 November 2020