

## **2009 Victorian Bushfires Royal Commission**

Letters Patent issued 16 February 2009

### **Practice Note No. 1**

#### **Commencement of hearings**

1. The Commission has determined the following schedule of hearings prior to the delivery of its interim report on 17 August 2009.
2. Public hearings will commence on Monday 20 April 2009. On that day the Commission will deal with applications for leave to appear before the Commission. Directions about applications for leave to appear are set out in paragraphs 6 to 10 below.
3. After the Commission has dealt with applications for leave to appear, the Chairperson of the Commission will make some preliminary remarks. Counsel assisting the Commission will then make an opening address in which he will outline the issues which are presently of interest to the Commission and which are likely to be the subject of investigation. Counsel assisting will outline the issues which are likely to be addressed in the Commission's interim report.
4. The Commission will conduct public hearings in an initial block of eight weeks, commencing on Monday 11 May 2009.
5. During the first block of public hearings, it is intended to lead evidence from senior Victorian emergency services personnel, in relation to the spread of the fires commencing in January 2009, and from the Bureau of Meteorology in relation to the weather conditions leading up to and on 7 February 2009. It is then intended to lead evidence concerning the warnings given to the public prior to and on 7 February 2009 and as to the operation of the

“Stay or Go” policy. If time permits, it is intended to lead evidence concerning building standards in bushfire prone areas.

### **Leave to appear**

6. Any person or organisation (**person**) seeking leave to formally appear before the Commission must lodge written notice of that intention by 4.00 pm on Thursday 9 April 2009. The notice should comprise a brief outline of no more than three pages identifying the term or terms of reference in which the person claims an interest, explaining the nature of that interest and giving reasons why they should be given leave to appear before the Commission.
7. Requests for leave to appear will be considered at the Royal Commission’s preliminary hearing at Court 3.3, County Court, 250 William Street, Melbourne on 20 April 2009.
8. The Commission may deal with an application administratively, in which case the person will be advised of the result of the application in writing or by email.
9. If the Commission does not deal with an application administratively, the person should attend the hearing on 20 April 2009 and be prepared to make oral submissions in support of their application for leave to appear.
10. Subject to any order to the contrary, a party granted leave to appear may appear at hearings of the Commission at which evidence will be taken or submissions received relating to issues in which the party granted leave has a substantial and legitimate interest. Participation in such hearings by the cross-examination of witnesses, the tender of oral or written evidence or the presentation of submissions will be subject to the grant of further leave, which may be granted on terms which may include (without limitation) the following:
  - (1) limitation of the particular topics or issues upon which the party may cross-examine, tender evidence or present submissions;

- (2) the imposition of time or other limitations upon cross-examination, evidence in chief or presentation of submissions;
  - (3) the provision of prior notice to the Commission of documents or other evidence to be tendered or a written outline of any proposed submissions;
  - (4) the requirement that submissions or evidence be presented in writing only.
11. Nothing in paragraphs 6 to 10 prevents a person from seeking leave to appear at any time if something that has occurred during the hearings leads the person to believe that his or her interests may be affected.

### **Conduct of hearings**

12. The Commission will generally sit from Monday to Thursday of each week in which hearings have been scheduled. The Commission may sit on a Friday if required. The Commission's usual hearing hours will be from 9.30 am to 1.00 pm and from 2.00 pm to 4.30 pm.
13. Details of the public hearings to be held by the Commission will appear on the Commission's website at [www.royalcommission.vic.gov.au](http://www.royalcommission.vic.gov.au).
14. The Commission accepts no obligation to notify parties given leave to appear before it, or other interested parties, of the times and places of its hearings. However, a person who, in the opinion of counsel assisting the Commission, may be substantially and directly interested in evidence to be produced to the Commission at a hearing will, if practicable, be notified in advance that it is intended to produce the evidence to the Commission.
15. Subject to the control of the Commission, counsel assisting the Commission will determine what witnesses are called, what documents are tendered to the Commission, and in what order they will call and examine witnesses.

16. The details of evidence to be produced to the Commission will not be published in advance of the hearing at which it is produced and generally will not be opened before it is called.
17. A person who, to the prior knowledge of counsel assisting the Commission, will be the subject of adverse evidence given before a public hearing of the Commission will, if practicable, be notified in advance of the evidence. If adverse evidence is given about a person who has not received advance notice of the evidence, counsel assisting the Commission will notify the person as soon as reasonably convenient afterwards, and will provide the person with a copy of the relevant part of the transcript or other details of the evidence considered appropriate by counsel. The person will be given an opportunity to contest the evidence if the person so requests.

#### **The evidence of witnesses**

18. Counsel assisting the Commission will identify and contact those persons whom they wish to give evidence as witnesses before the Commission. Counsel assisting will propose an outline of the proposed evidence in chief of each of these witnesses.
19. A witness should deliver to the solicitors assisting the Commission a copy of the witness's statement and a list of all documents which he or she believes are relevant to the evidence. This material should be delivered in a timely fashion pursuant to arrangements reached with counsel and solicitors assisting the Commission.
20. Where the witness (or the organisation to which the witness belongs) is legally represented, the Commission expects that the witness's statement will be prepared by the lawyers for the witness. The Commission expects that the preparation of a witness statement by the witness's lawyers will occur in close consultation with counsel and solicitors assisting the Commission.
21. Where a witness is not legally represented, counsel and solicitors assisting the Commission may assist the witness to prepare his or her statement.

22. Subject to any order concerning confidentiality, all persons who have been given leave to appear and whose interests may be affected by the matters addressed in a witness statement will be given a copy of the document before the witness is called. The Commission will endeavour to deliver the statement a reasonable time before the witness is to be called. The ability of the Commission to do so will depend on the degree of cooperation offered by the witness and his or her representatives.

### **Examination and cross-examination of witnesses**

23. All witnesses will be called by counsel assisting the Commission. As a general rule a witness's evidence in chief will be given by first adopting his or her witness statement. Counsel assisting may examine (including by cross-examining) the witness further to supplement his or her statement.
24. Any witness who is legally represented may next be examined by his or her own legal representative, and then be cross-examined by or on behalf of any person considered by the Commission to have sufficient interest in doing so. The witness's own legal representative and finally counsel assisting the Commission may re-examine. At all times, duplication and repetition is to be avoided.
25. Cross-examination of witnesses will be by leave only. No general, open-ended right of examination, cross-examination or tender of evidence will be given to any person. Subject to general considerations of fairness the Commission may impose conditions or restrictions on leave to cross-examine if the interests of efficiency and justice so demand.
26. A copy of any document proposed to be put to a witness in cross-examination must be provided to counsel assisting the Commission as soon as possible after a decision is made to use the document for this purpose, and in all cases prior to being put to the witness.

**Applications to call a witness or tender a document**

27. Any person granted leave to appear before the Commission who wishes to have the evidence of a witness placed before the Commission should notify the solicitors assisting the Commission of the name of the witness and provide a signed statement of his or her expected evidence. Counsel or solicitors assisting the Commission or Commission staff may interview the witness and take a further statement from him or her. Counsel assisting the Commission will decide whether to call the witness.
28. Any person granted leave to appear before the Commission who wishes to tender a document to the Commission should notify the solicitors assisting the Commission of the document, and should provide a copy of the document if it has not already been produced to the Commission. Counsel assisting will decide whether to tender the document.
29. If counsel assisting the Commission has declined a person's request to call a witness or tender a document, the person should write to the solicitors assisting setting out the reasons why the witness should be call or the document tendered. Counsel assisting may decide to place the evidence before the Commission, or may reaffirm his decision not to do so.
30. If counsel assisting has reaffirmed his decision not to place the evidence before the Commission, the person concerned may apply directly to the Commission for leave to call the witness or tender the document.

**Procedural matters**

31. If a person who has been granted leave to appear intends to raise a procedural matter, the person should write to the solicitors assisting the Commission identifying the issue to be raised and setting out a brief outline of the submissions the person proposes to make in relation to the issue.

32. A party who wishes to raise such an issue should give the Commission as much notice as possible of that intention.
33. Without limiting its generality, the term “procedural matters” includes objections to or restrictions on the production or use of documents, matters relating to the way in which witnesses are examined and cross-examined, applications for corrections to transcript and administrative arrangements for the conduct of hearings.

### **Counsel and solicitors assisting the Commission**

34. A reference in this practice note to counsel assisting the Commission is a reference to John T Rush QC, senior counsel assisting the Commission. Senior counsel assisting may from time to time delegate responsibilities under this practice note to junior counsel assisting. Junior counsel assisting the Commission are Rachel Doyle, Melinda Richards and Lisa Nichols.
35. A reference in this practice note to the solicitors assisting the Commission is a reference to Corrs Chambers Westgarth. Correspondence to the solicitors assisting the Commission should be marked to the attention of Val Gostencnik and sent to [val.gostencnik@corrs.com.au](mailto:val.gostencnik@corrs.com.au) or, until further notice, at Corrs Chambers Westgarth, 600 Bourke Street, Melbourne VIC 3000; GPO Box 9925, Melbourne VIC 3001.

### **Variation of practices**

36. The Commission reserves the right at any time to vary the practices set out in this practice note.