

Appendix F Practice Note Number 1

COMMISSION OF INQUIRY HMAS SUCCESS

PRACTICE NOTE NUMBER 1

Introduction

1. The following procedures will be adopted in respect of the hearings conducted by the HMAS Success Commission of Inquiry ("the Commission") and should be read as supplementary to the requirements set out in the *Defence (Inquiry) Regulations 1985*.

Inquiry Hearings

2. Unless the President otherwise directs, the hearings will take place in public at Level 11, Defence Plaza, 270 Pitt Street, Sydney, NSW, 2000.

Appearance before the Commission

3. In order to be authorised to appear before the Commission, a person must make application to the President to be considered a person who may be affected by the Commission.
4. Such application may be made by a representative on behalf of a person.

Adducing evidence

5. All evidence of witnesses is to be taken on oath or affirmation but may be by way of statement verified on oath or affirmation.
6. Subject to the control of the President, Counsel Assisting will determine what witnesses are called and in what order, and what documents are tendered to the Commission.
7. Persons authorised to appear may request Counsel Assisting to call a witness. Such request must include the name of the witness, a summary of evidence which the witness is expected to give and, where practicable, a detailed statement of the evidence. Counsel Assisting may interview a proposed witness.
8. Unless the President otherwise directs, the order of questioning of witnesses called by Counsel Assisting shall be:
 - (a) Counsel Assisting;
 - (b) persons authorised to appear, subject to the President's discretion;
 - (c) Counsel Assisting.
9. The President may:
 - (a) disallow questions posed to witnesses;

- (b) ask questions of a witness at any time.
- 10. Documents and other articles may be tendered to the Commission and received into evidence outside formal hearings of the Commission.
- 11. The details of evidence to be adduced to the Commission will generally not be provided in advance of the hearing to any person who is authorised to appear before the Commission.
- 12. Any person who is authorised to appear who seeks a direction for a closed hearing for particular evidence, or a direction for non-publication of evidence, must (as is reasonably practicable) provide Counsel Assisting in advance with a copy of the proposed application, the form of the direction sought, the content of the proposed evidence and any submissions in support of the application.
- 13. In an appropriate case the President may direct:
 - (a) non-publication of; or
 - (b) the use of a pseudonym to protect;the name of any witness or any person about whom evidence is given.

Cross-examination

- 14. The right to cross-examine will be at the discretion and subject to the control of the President.
- 15. Cross-examination will generally only be permitted where:
 - (a) there is a disputed issue of fact relevant to the terms of reference;
 - (b) it is proposed to put a submission inviting an adverse finding against any particular witness in respect of a disputed issue of fact;
 - (c) there is a disputed issue of fact which could reasonably give rise to an adverse finding against a particular person and the finding may be diminished or eliminated by an attack on the credit of the witness giving evidence; or
 - (d) a topic of sufficient relevance to the Commission is identified.
- 16. The President may:
 - (a) limit the particular topics or issues upon which the person or legal representative may cross-examine; and
 - (b) limit the number of authorised persons to be permitted to cross-examine a witness.

17. The questioning of witnesses in cross examination is at all times to be conducted in such a manner so as to avoid irrelevant material, repetition, prolixity, or matters that can properly be ascertained other than by witness questioning, or that can properly be made the subject of later submissions.

18. Insofar as practical, where a document is proposed to be put in cross-examination to a witness, Counsel Assisting should be provided with a copy of the document prior to its intended use.

Submissions and points of law

19. **The President may require** that submissions as to issues of law, fact and/or possible adverse findings be presented in writing only.

20. Insofar as practical, persons authorised to appear are to give Counsel Assisting advance notice of any points of law which are proposed to be raised.

Warning notice of rights and obligations of witnesses

21. **Counsel Assisting is to provide to prospective witness** a notice detailing their rights and obligation as a witness before the Commission and to confirm with such witness that they have read and understood that notice.


Exclusion of prospective witnesses

22. **Subject to obtaining leave of the President**, any person who is a prospective witness is not to be present during the evidence of another witness until he or she has been excused from giving evidence by the President.

Additions or variations

23. **The President reserves the right to add to or vary the above procedures at any time.**

Dated: 11 MARCH 2010



Hon. R. V. Gyles AO QC
President

