



**Special Commission of Inquiry into the
Ruby Princess**

PRACTICE GUIDELINE 3

Witnesses at the Special Commission

Part A

This Guideline

1. This Practice Guideline (PG 3) relates to the conduct of the Special Commission of Inquiry into the Ruby Princess (**Ruby Princess Inquiry** or **Special Commission**). It should be read in conjunction with the *Special Commissions of Inquiry Act 1983* (NSW) (**Act**) and the terms of reference contained in the Letters Patent establishing the Special Commission dated 15 April 2020 and Practice Guideline 1.
2. This Practice Guideline sets out general guidance about applications for leave to appear before the Special Commission.

Part B

Witnesses generally

3. Counsel Assisting or Solicitors Assisting the Special Commission will:
 - a. identify, contact and call each individual whom they wish to give evidence as a witness before the Special Commission;
 - b. determine whether an individual, in respect of whom a statement has been prepared or received, will be called to give evidence at a hearing;
 - c. determine the order in which witnesses are to give evidence; and
 - d. determine which documents are tendered during public hearings.
4. As a general rule, it is expected that the Commissioner will receive the evidence-in-chief of each witness called in the form of a written statement.

5. When called to give evidence, the witness will be asked to adopt their witness statement as their evidence-in-chief. This may be supplemented by additional evidence-in-chief only by leave of the Commissioner.
6. It is expected that where an individual is legally represented:
 - a. the Solicitors Assisting the Special Commission will provide an outline of the topics that should be addressed in a proposed witness statement; and
 - b. the witness statement must follow, and address each topic included in the outline.
7. Evidence included in a witness statement which extends beyond the outline that was provided by the Solicitors Assisting may, in the discretion of the Commissioner, be excluded from that witness' evidence-in-chief.
8. Individuals required to give evidence at a hearing may be provided with a 'Summons to Attend and Give Evidence' and notice of the time that the Special Commission will call upon the Summons. Individuals unavailable to attend on a particular date should give notice of the date and the reason for the unavailability to the Solicitors Assisting the Special Commission at the earliest opportunity at the following address: solicitors.assisting@rubyprincessinquiry.nsw.gov.au.
9. Individuals required to give evidence will be served with a notice for the production of their witness statement.

Part C

Cross-examination

10. Cross-examination of witnesses by a person other than Counsel Assisting the Special Commission will be by leave only. No general, open-ended leave to examine, cross-examine, or tender evidence will be given to any person.
11. In determining whether a person has a sufficient interest to cross-examine a witness, the Commissioner may call upon the cross-examiner to:
 - a. identify the purpose of the cross-examination;
 - b. set out the issues to be canvassed; and
 - c. provide copies of any documents to which they propose to take the witness.
12. The procedure for cross-examination, always at the Commissioner's discretion, will generally be as follows:
 - a. Where people represented before the Special Commission have a common or similar interest in relation to the evidence of a particular witness:

- i. their representatives should consult with each other and with Counsel Assisting the Special Commission before the witness is called;
 - ii. agreement should be attempted to be reached between all relevant people about the order and general areas or subjects of cross-examination;
 - iii. if no agreement is reached, the Commissioners will direct the order; and
 - iv. revisiting general areas or subjects covered by earlier cross-examination by people with a common or similar interest will not be permitted.
 - b. Cross-examination will be limited to the matters in issue, and may otherwise be restricted or curtailed by the Commissioner.
 - c. A copy of any document proposed to be put to a witness must be provided to Counsel Assisting the Special Commission as soon as possible after a decision is made to use the document and in all cases prior to the date of the hearing at which it is intended to be used.
 - d. Cross-examination that goes only to credit will not be permitted.
 - e. Cross-examination will be permitted only to the extent that the Commissioner believes it will assist in his task of investigating and reporting on the subject matter of the terms of reference.
13. The procedure for examination and cross-examination is as follows, which is subject to change only upon a grant of leave by the Commissioner where the circumstances require:
- a. Counsel Assisting the Special Commission will lead the witness' evidence in chief, typically by adoption by the witness of their statement on oath or affirmation before it is tendered;
 - b. Counsel Assisting may then ask questions of the witness after evidence-in-chief has been led;
 - c. other people with leave to appear may then, with leave, cross-examine the witness in accordance with the terms of the leave granted;
 - d. the legal representative (if any) for the witness may then, with leave, re-examine the witness; and
 - e. finally, Counsel Assisting the Special Commission may then ask any final questions arising from the witness' earlier evidence.

Part C**Tendering documents (other than witness statements)**

14. Counsel Assisting the Special Commission, subject to the Commissioner's control, will determine which and when documents are to be tendered.
15. Before the commencement of a public hearing, each person granted leave to appear at that hearing may, in the discretion of Counsel Assisting or the Solicitors Assisting the Special Commission, be given confidential access to documents that are likely to be tendered as exhibits at the public hearing and which could affect the person's interests.
16. One purpose of providing this access is to enable a person to identify whether any application should be made for a non-publication direction in relation to a document or any part of a document.
17. Additional documents may be tendered by Counsel Assisting the Special Commission during the course of a public hearing. If a person has a substantial and direct interest in the issues to which an additional document being tendered relates, the Special Commission will provide the person with a copy of the additional document relevant to the issues that may give rise to that interest.
18. If a person seeks to have a document placed before a public hearing, the process is that:
 - a. they must notify the Solicitors Assisting the Special Commission that they wish to have the document placed before the public hearing by providing a copy of the document to the Solicitors Assisting the Special Commission at solicitors.assisting@rubyprincessinquiry.nsw.gov.au within a reasonable time before the public hearing, which must be not less than 7 days save for in exceptional circumstances;
 - b. the Commissioner may require the production of other documents; and
 - c. Counsel Assisting the Special Commission will decide whether or not the documents are to be tendered.
19. An application to tender a document may only be made directly to the Commissioner if this process outlined in the preceding paragraph has been completed and Counsel Assisting the Special Commission has refused to tender a document.

Bret Walker

Commissioner

20 April 2020