

PRACTICE GUIDELINE 6
VIRTUAL PUBLIC HEARINGS

Part A

Introductory matters

1. This Practice Guideline relates to the conduct of public hearings of the Royal Commission into Aged Care Quality and Safety (**Royal Commission**) which the Royal Commissioners determine should be conducted virtually in part or in full.
2. The term ‘virtual hearing’ is used throughout this practice guideline to refer to Royal Commission hearings conducted by electronic means: videoconferencing; teleconferencing or both. A virtual hearing is an official hearing of the Royal Commission.
3. As a consequence of the COVID-19 pandemic, the Royal Commissioners may decide that a public hearing of the Royal Commission should be conducted as a virtual hearing in part or in full. This will necessitate bespoke procedures to facilitate the efficient and fair collection of evidence.
4. This Practice Guideline should be read in conjunction with the *Royal Commissions Act 1902* (Cth), the terms of reference contained in the Letters Patent establishing the Royal Commission dated 6 December 2018, and which the Governor-General amended by Letters Patent on 13 September 2019, and other Practice Guidelines, including Practice Guidelines 1 and 3 which apply to the Royal Commission’s public hearings. To the extent of any inconsistency with other guidelines, this Practice Guideline prevails in relation to virtual hearings.
5. Where the Royal Commission considers it appropriate, this Practice Guideline and any future practice guidelines may at any time be varied, changed or replaced.

Part B

Location of virtual hearings

6. The Chair of the Royal Commission will designate the place at which a virtual hearing is to be considered to be taking place, notwithstanding that the Commissioners may be in different places.

Location of participants during virtual hearings

7. The Commissioners, Counsel Assisting, Solicitors Assisting and Royal Commission staff and contractors will be physically present in hearing rooms during virtual public hearings, which may be in different locations.
8. All public hearings will be streamed through the Royal Commission’s website with a short delay (usually less than 2 minutes).
9. Legal representatives for any party granted leave to appear, or the party with leave when not legally represented, will be provided with details to separately access the Royal Commission’s videoconferencing platform, so as to view the public hearings in real time. Access will be

facilitated by Solicitors Assisting prior to the part(s) of the hearing for which the legal representative/party has leave.

Part C

All witnesses to appear by videoconference

10. All witnesses summonsed to attend to give evidence at a virtual hearing will be required to appear by videoconference unless otherwise advised. Where a direction is made that a witness not be identified that witness will not be shown over the videoconference except to the Commissioners, Counsel Assisting, Solicitors Assisting, Royal Commission staff and contractors, parties with leave to appear at that virtual hearing, as well as to that witness's legal representative and support person.
11. With the Royal Commissioners' leave, a witness may give evidence by telephone, if a suitable videoconference is not available. Such circumstances are likely to be exceptional. Any witness summonsed who considers that she or he may not be able to give evidence by videoconference must contact Solicitors Assisting as soon as possible.
12. Specific arrangements for witnesses to give evidence (including testing of their videoconference connection) will be provided to each witness ahead of their testimony.
13. Each witness appearing by videoconference must:
 - a. join the videoconferencing platform from a quiet and appropriate location
 - b. be alone in the room where they connect to the videoconferencing platform (unless they are accompanied by an IT officer to assist with the videoconference, a representative of the Royal Commission or a support person/ legal representative approved by a Co-Solicitor Assisting) and
 - c. join the videoconferencing platform at least 15 minutes before their scheduled start time, to enable final arrangements for their testimony to be confirmed.
14. The Commissioners will approve a form of oath and affirmation that may be modified to conform to the requirements and limitations of a virtual hearing.
15. Any witness who wishes to have a support person or legal representative present in the room while they give evidence must seek approval from a Co-Solicitor Assisting at least 24 hours before giving evidence. Any support person or legal representative must not communicate with a witness while the witness is giving evidence without leave from the Commissioners.

Part D

Participation by parties with leave to appear in hearings

16. With the Commissioners' leave, a party's legal representative may examine their own witness following Counsel Assisting's examination. Any such examination must be limited to matters directly arising out of Counsel Assisting's examination (or such other matters with the Commissioners' leave), and will be conducted using the Royal Commission's videoconferencing platform, which will be unmuted for this purpose.

17. Paragraphs 22 – 25 of Practice Guideline 3 which deal with cross-examination apply to virtual hearings with the following modifications:
- a. If a party has any specific questions they believe should be asked of, or topics that should be explored with, a particular witness, they:
 - i. must notify Solicitors Assisting at least 24 hours before the witness is scheduled to give evidence (unless the party has had less than 48 hours' notice that the witness will give evidence and, where relevant, the nature of the evidence). Solicitors Assisting will then liaise with Counsel Assisting with a view to having those questions or topics explored in an ordered manner through Counsel Assisting's examination; or
 - ii. may, where it is not possible to provide notice in accordance with paragraph 17(a)(i), or where Counsel Assisting is of the view that the questions are better asked through the parties' legal representative, make application for leave to cross-examine pursuant to paragraph 18.
18. In the event that a party with leave to appear wishes to make an application or objection during the course of a hearing:
- a. If the parties are observing the hearing by way of the Royal Commission's videoconferencing facilities, the party or legal representative may unmute herself or himself to object or seek leave to address the Commissioners directly.
 - b. In the event that the videoconference platform is not available, or not functioning, the party must notify Solicitors Assisting using a dedicated live communications channel established for that purpose. Solicitors Assisting will bring the application to the Commissioners' attention as a matter of urgency. The party's communication to Solicitors Assisting must indicate that it is an objection to a question, or (briefly) state the nature of the application (to enable Solicitors Assisting to communicate that to the Commissioners so that the Commissioners may appropriately consider next steps, including taking a short adjournment).

Part E

Etiquette for participating in a virtual hearing

19. Etiquette for participating in a virtual hearing is the same as participating in an 'in person' hearing. Only one person should speak at a time and each individual must take care not to speak over the top of other participants.
20. When an individual is not speaking, her or his microphone must be muted to minimise unnecessary background noise.
21. There may be a delay between the individual speaking and the sound being heard by the other participants. Allowances must be made during the hearing as appropriate to accommodate any delay being experienced to avoid one participant talking over another.
22. Visual and audio quality can also be affected by a number of factors which can lead to unexpected loss of connection or deterioration to an unacceptable level of picture or sound.

Individuals should remain alert to any deterioration in picture and sound quality and inform Solicitors Assisting immediately if this is impacting on their ability to participate fully.

The Honourable Tony Pagone QC
Commissioners

Ms Lynelle Briggs AO

9 July 2020