

PRACTICE GUIDELINES – 01/2023

*Contacting the Commission, Leave to Appear, Witness Statements, Confidentiality
and Other Matters*

1. Published 18 October 2023

Part A. Introduction

1. The Commission of Inquiry to examine DNA Project 13 concerns (the Commission) was established by Order in Council made under the *Commissions of Inquiry Act 1950* (the Act). Its Terms of Reference are available on the Commission's website: <https://www.dnaproject13inquiry.qld.gov.au/>
2. This document contains general practice guidelines relating to the conduct of the Inquiry. The Commissioner may dispense with compliance with these guidelines, or vary them, as she considers appropriate in particular circumstances. Further guidelines may be published on the Commission's website from time to time.
3. The Commissioner does not intend to issue a call for public submissions. However, any person with evidence relevant to the Terms of Reference should not hesitate to contact the Commission's Executive Director, to discuss the provision of that information to the Commission. The Executive Director can be contacted via email public@dnaproject13inquiry.qld.gov.au
4. Subject to the Commissioner's discretion to exclude the public or any portion of the public from any of its sittings, the Commission's hearings will be open to the public and livestreamed via its website.

Part B. Communicating with the Commission

5. The Commission will provide general notice of procedural matters on the Commission's website.
6. Any person or organisation communicating with the Commission should do so initially via public@dnaproject13inquiry.qld.gov.au
7. Unless otherwise specified by the Commission, documents should be provided electronically (including witness statements and attached exhibits, submissions and all other information).
8. Where possible, all written material submitted to the Commission should be in fully text-searchable, multi-page PDF/A format.
9. The Commission may make exceptions to the requirement for information to be provided electronically. Anyone seeking an exception or assistance in meeting this

requirement should contact the Executive Director to discuss the way they might provide the information to the Commission.

Part C. Leave to Appear at Public Hearings

10. Any person summonsed to attend before the Commission to give evidence pursuant to s 5(1)(a) of the Act may be represented by a lawyer while that person is giving evidence.
11. Otherwise, appearances and legal representation before the Commission at its public sittings will not be allowed without the Commission's leave.
12. Leave to appear entitles a person to participate in the proceedings of the Commission, subject to the Commissioner's control and to such extent as the Commissioner considers appropriate. It is anticipated that any person's leave to appear may:
 - a. be subject to a condition that no evidence may be tendered or adduced in chief other than by Counsel Assisting the Commission, with the consequence that any evidence the person with leave to appear seeks to have admitted must be included in a witness statement by that person which has been provided in advance to the Executive Director for the attention of Counsel Assisting;
 - b. be limited by restrictions concerning the topic or topics on which the person (or the person's legal representative) may cross-examine any witness or witnesses, and/or make any submissions;
 - c. be limited by restrictions on the ability of any person (or any person's legal representative) to make oral submissions; and/or
 - d. be limited to making submissions on matters within the Terms of Reference of which they have particular knowledge or expertise.
13. "Leave to Appear" is not to be confused with attending public hearings of the Inquiry as an observer. Any person is permitted to attend and observe the public hearings.
14. A person seeking leave to appear at public hearings should complete the form entitled "Application for Leave to Appear" on the Commission's website.
15. Written submissions attached to the application should be limited to two pages and address:
 - a. 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 basis of that interest or how that interest may be materially affected.
 - b. the parts of the Terms of Reference in which the person has particular knowledge or expertise enabling that person to assist the Inquiry including details of the knowledge or expertise.
 - c. why those matters cannot be adequately dealt with through written submissions or statements

16. 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.
17. In some cases, the Commission 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.
18. 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 at public@dnaproject13inquiry.qld.gov.au to arrange for their application to be received and considered.
19. Any leave to appear may be varied or withdrawn or made subject to additional conditions at any time in the discretion of the Commissioner.

Part D. Summonses

20. From time to time, the Commission may issue summonses pursuant to s 5 of the Act requiring persons to attend to give evidence and/or to produce documents and/or to give information and answer questions:
 - a. the Commission encourages any person with evidence (whether or not contained in documents) or information they believe is or may be relevant to the Terms of Reference to volunteer assistance to the Commission; and
 - b. any person in this category who wants to avoid the issue or operation of a summons to them should notify the Executive Director immediately so that such a request can be considered by the Commissioner.
21. Unless otherwise directed by the Commissioner, the primary evidence of witnesses before the Commission (whether summonsed or not) is intended to be given in the form of a written statement.

Part E. Witness Statements

22. Witness statements:
 - a. Should be either in the form of an affidavit or statutory declaration;
 - b. must contain only statements of factual matters within the direct knowledge of the witness, unless c. below applies;
 - c. 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;
 - d. 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 or otherwise to the Terms of Reference 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;
- e. must present those exhibits in a way that will facilitate the Commission's efficient and expeditious reference to them, and in particular
 - i. with respect to hard copies, by placing a letter, number or other identifying mark on each exhibit, and by indexing and paginating or tabbing bundles of documents;
 - ii. with respect to electronic copies, by providing them in fully text-searchable, multi-page PDF/A format.
 - f. should be prepared by the witness's legal representative where leave to appear and to be legally represented has been granted;
 - g. where the witness has no legal representative, may be prepared by the witness with the assistance of Commission staff by arrangement between the witness and (initially) the Executive Director.
23. Following receipt of a witness's primary statement, Commission staff may request or require the witness:
- a. to attend an interview in relation to the contents of the statement or any aspect of the Terms of Reference; and/or
 - b. to provide a supplementary statement or statements in respect of any matter relating to the Terms of Reference.
24. In some instances, the Commission may require persons to attend to provide information to, and answer questions asked by, Counsel Assisting and/or Commission staff, concerning any matter relating to the Terms of Reference, before any witness statement has been prepared.

Part F. Public Hearings

25. Public hearings will be held in Brisbane between 30 October 2023 and 3 November 2023 in Court 40, Brisbane Magistrates Court, 363 George Street, Brisbane.
26. The hearings will be open to the public and livestreamed from the Commission's website. Hearings provide the community an opportunity to see and hear witnesses giving evidence to the Commission and also provide an opportunity for that evidence to be tested by the parties who have been given leave to appear at the hearings.
27. The procedure to be followed at the public hearings will be subject to the direction of the Commissioner.
28. Generally, and subject to the Commissioner'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.
- 29. The Commissioner may limit the issues about which a witness may be examined and limit the time available for examination by any person.
- 30. 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 Commissioner.
- 31. Subject to any orders the Commissioner may make prohibiting publication of any document or information provided to the Commission, and in addition to Part E, while public hearings are on foot:
 - a. Where possible, the Commission will publish regularly to the parties and/or on its website a list of the witnesses to be called to give oral evidence and the proposed dates and times of their evidence;
 - b. The published list of witnesses will be updated regularly (and remains, therefore, subject to change);
 - c. If a witness statement has not already been made available to the parties, the Commission will, where possible, make the witness statement available to the persons with leave to appear as soon as practicable (and wherever possible with at least 1 business day before the witness is called);
 - d. Where possible, before a witness is called, the Commission will give the witness or his or her legal representative notice of the Commission's area of interest and a list of the documents to which the witness may be taken (other than those attached to or referred to in the witness's statement) and provide all other parties with an interest in such issues or documents with copies of the notice and the list;
 - e. At least 2 business days before the witness is to be called to give evidence, any person or party with leave to appear who wishes to cross-examine the witness must give notice to the Executive Director, specifying:
 - i. The name of the witness proposed to be cross-examined;
 - ii. A considered estimate of the time which will be required for the cross-examination;
 - iii. In relation to expert witnesses, the topics and parts of the experts' reports which will be the subject of cross-examination, including the propositions and suggestions to be put to the experts, sufficiently to enable the experts to properly address all questions.
 - f. If the person giving a notice of proposed cross-examination anticipates showing the witness any document -
 - i. If the document has already been provided to the Commission, it must be identified in the notice;
 - ii. A copy of the document must be provided with the notice, where possible, in one of the following electronic formats:

- Text (.txt) for plain text records
 - Fully text searchable (.pdf) PDF/A or PDF for formatted document type records
 - JPEG (.jpg/.jpeg) for photos
 - MPEG4 (.mp4) for videos
 - MP3 (.mp3) for audio files.
 - CSV (.csv) for spreadsheet data
- g. Any person with leave to appear who wishes to have evidence adduced from a witness other than a witness proposed to be called by Counsel Assisting must give notice to the Executive Director accompanied by a witness statement from the witness.
32. Generally, and subject to the Commissioner's discretion:
- a. All witnesses giving evidence at the public hearings will be called and examined by Counsel Assisting the Inquiry. The examination-in-chief of a witness will usually involve the tendering of a statement provided by the witness to Counsel Assisting in advance of the hearing and the taking of any additional oral evidence;
 - 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.
33. The Commissioner may limit the issues about which a witness may be examined and limit the time available for examination by any person.
34. 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 Commissioner.
35. Nothing in this Guideline prevents a person seeking leave from the Commissioner to cross-examine a witness at any time during the Inquiry if something occurs during the Inquiry which leads that person to believe that his or her interests may be adversely affected.
36. Any person or party with leave to appear who wishes to raise a procedural matter must give notice to the Executive Director identifying the matter, stating the outcome sought, and summarising the submissions to be advanced in support of that outcome.

Part G. Publication and Confidentiality

37. Subject to the Commissioner's determination of any application for confidentiality, all information, witness statements (including exhibits to those statements), documents

or submissions provided to the Commission may be published on the Commission's website or otherwise made publicly available.

38. Any person who provides a witness statement or any other document to the Commission, and who wants to apply for confidentiality and/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:
 - a. if they consider it necessary to address confidentiality before providing any material, should contact the Executive Director to discuss arrangements that might be made in that regard;
 - b. subject to any arrangements made under (a) above, should provide the material to the Commission in writing 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 claimed to be necessary and appropriate despite the public nature of the Inquiry;
 - c. subject to alternative arrangements being made with the Executive Director, should indicate on the face of the material where confidentiality is sought.
39. Where confidentiality is applied for in relation to material provided to the Commission, either:
 - a. the Commissioner shall decide the application on the papers and notify the person or their nominated legal 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
 - b. the Commission shall notify the person or their nominated legal representative that they will be required to appear before the Commissioner 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 Commissioner's decision following that appearance.
40. Nothing in this Guideline should be taken as limiting the Commissioner's powers, whether at the request of any person or on her own initiative, to treat any material or information as confidential and to take any steps appropriate for the preservation of that confidentiality.



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The Honourable Dr Annabelle Bennett AC SC

Commissioner

Dated: