



PERTH CASINO ROYAL COMMISSION

111 St Georges Terrace,
PERTH WA 6000

PRACTICE DIRECTION 5

Non-Publication Orders and Production of Documents to the PCRC

Introduction

- 1 This Practice Direction relates to the conduct of the Royal Commission into the affairs of Crown Casino Perth and related matters (**PCRC**) and sets out general guidance in relation to applications for non-publication orders and the production of documents to the PCRC..
- 2 This Practice Direction should be read in conjunction with the *Royal Commissions Act 1968 (WA)* (**Act**) and the Commission issued under the Public Seal of the State of Western Australia establishing the Royal PCRC on 5 March 2021, including the terms of appointment (**Terms of Reference**).¹
- 3 This Practice Direction may be varied or replaced at any time. The PCRC may depart from this Practice Direction if it considers it appropriate to do so.

Application for Non-Publication Orders

- 4 PCRC recognises the public interest in conducting open hearings. While hearings are open to the public, the PCRC acknowledges that there will be circumstances where it may be necessary to restrict or prohibit the publication or disclosure of certain evidence received by the PCRC.
- 5 This Practice Direction is intended to address matters relating to the application of a non-publication order and the way in which the PCRC will handle documents the subject of an application for a non-publication order, and any subsequent order, including in the context of public hearings. It also addresses how parties can assist the PCRC in this regard.
- 6 The PCRC may make a non-publication order on its own initiative or on the application of:
 - (a) a party to the proceedings concerned, or
 - (b) any other person considered by the PCRC to have a legitimate interest in the making of the order.
- 7 The PCRC may make a non-publication order subject to any restrictions and conditions it considers necessary.
- 8 A party or person intending to make an application for a non- publication order must advise Solicitors Assisting that they intend to make such an application on or before the date for production of that document. The *application* for an

¹ The Terms of Reference are the terms of appointment set out in paragraph (a) of 'Operative Part' of the Commission issued under the Public Seal of the State of Western Australia establishing the Royal Commission on 5 March 2021 and are available [here](#).

order, with an attached draft minute of order, must be made within five business days of the production of the document unless the PCRC grants a longer time period for this application.

- 9 The PCRC may make an order prohibiting or restricting the publication of certain information, including:
- (a) a transcript of proceedings of the PCRC or evidence given before the PCRC; and
 - (b) any documents, books or writings produced to or obtained by the PCRC.
- 10 In making a non-publication order the PCRC will specify the information to which the order applies with sufficient particularity to ensure that the order is limited to achieving the purpose for which the order is made.

Manner of Production of documents the subject of an application for a non-publication order

- 11 If a party, who is asked to produce documents to the PCRC, intends to make an application for non-publication of a document or part thereof, that party must nonetheless produce to the PCRC an unredacted and complete copy of the document (referred to here as the **Complete Version**), which can be highlighted in the manner described in the PD 3 Protocol, para 56 if applicable.
- 12 The party should code the document which is to be the subject of the application for non-publication in accordance with PD 3 Protocol, and should also identify the document accordingly in any document list provided and, ideally, in any associated correspondence to the PCRC which accompanies the documents produced.
- 13 The party applying for a non-publication order for part only of a document, where this is a document which the party itself will produce to the PCRC, should produce to the PCRC, at the time for producing the Complete Version, a version of the document which has the part of the document, for which the non-publication order will be sought, redacted (**the Redacted Version**). The Redacted Version of the document should be given the same document ID as the Complete Version with the addition at the end of that ID of the reference “_R”.
- 14 If a party intends to apply for a non-publication order for a document or part only of a document, where such a document has been produced to the PCRC by another party, that party must give the Solicitors Assisting the PCRC notice of the application (and the document or part thereof which will be subject to that application) as soon as possible after that party is notified that the PCRC intends to use the document in a public hearing of the PCRC together with a Redacted Version of the relevant document.
- 15 The party applying for a non-publication order for part only of a document should not rely upon the PCRC to prepare the Redacted Version of the document. While the PCRC may be able to attend to this in certain urgent

circumstances, the PCRC ordinarily will not be responsible for preparing Redacted Versions.

Use of non-publication order documents at Commission hearings

- 16 The Complete Version of each document will be available to the PCRC and parties who have leave to appear before the PCRC.
- 17 Counsel Assisting the PCRC will be expected to tender in evidence before the PCRC the Complete Version of each document. The Complete Version of each document will be added to the Hearing Book once tendered.
- 18 The use of Redacted Versions in public hearings of the PCRC is intended to address the concerns of parties in respect of the publication of parts of documents. These altered versions are not substitutes for the Complete Versions of such documents received into evidence by the PCRC.
- 19 The PCRC will handle a document, in relation to which a party has notified the PCRC that it will make an application for non-publication of the document or part thereof, as if such an order had been made by the PCRC unless and until the PCRC decides that the document or part thereof should not be the subject of a non-publication order. This is because the PCRC acknowledges that to do otherwise would, in effect, render the process for determination of an application for non-publication after a document is produced redundant and thereby potentially cause prejudice to the party seeking non-publication. However, if the PCRC considers that a public examination will be affected, the party applying for the non-publication order may be required to make the application before the examination of the witness proceeds.
- 20 If a party applies for a non-publication order in respect of the entire contents of the Complete Version of a document and such an application has not yet been determined by the PCRC, or the PCRC has made the non-publication order as sought, the PCRC will make arrangements such that, during a public hearing of the PCRC, the content of this document is:
 - (a) displayed only to the PCRC, parties with leave to appear who are in attendance at the hearing, and any witness to whom the document may be shown;
 - (b) not read or referred openly in the public hearing by any person.
- 21 In certain circumstances, if the restrictions described in the preceding paragraph are not possible, or in the interests of the proper functioning of the PCRC, Counsel Assisting or the party applying for a non-publication order may apply to the Commissioners for the document only to be handled in a private hearing in order to ensure that the content of the document is not published.
- 22 If a party applies for a non-publication order in respect of part only of a document and such an application has not yet been determined by the PCRC, or the PCRC has made the order as sought, the PCRC will make arrangements such that, during a public hearing of the PCRC:

- (a) only the Redacted Version of the document (as the case may be) is displayed to members of the public at the public hearing (including via the live stream);
- (b) the Complete Version of the document will only be displayed or otherwise be available to the PCRC, parties with leave to appear who are in attendance at the hearing, and any witness to whom the document may be shown.

The Honourable Neville Owen AO



The Honourable Carolyn Jenkins



Mr Colin Murphy PSM



1 June 2021