



# PERTH CASINO ROYAL COMMISSION

111 St Georges Tce  
PERTH WA 6000

## PRACTICE DIRECTION 4<sup>1</sup>

### WITNESS EVIDENCE

#### INTRODUCTION

- 1 This Practice Direction relates to the conduct of the Perth Casino Royal Commission (**PCRC**) and sets out general guidance in relation to the preparation of witness statements, the examination and cross-examination of witnesses, and requests to access documents in the custody of 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 PCRC on 5 March 2021, including the terms of appointment (**Terms of Reference**).<sup>2</sup>
- 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.

#### WITNESS STATEMENTS

- 4 Each person called to give evidence before the PCRC will be requested to provide a written witness statement setting out the evidence-in-chief of that witness.
- 5 Subject to any contrary order, the witness statement, once adopted, will stand as the evidence-in-chief of that witness.
- 6 The general practice of the PCRC will be for the Solicitors Assisting the PCRC to provide an outline of the questions or topics that should be addressed by a witness in their witness statement.
- 7 The witness statement should follow the order of topics set out in the outline, unless there is good reason to depart from that order and should comprehensively address the witness' evidence about each topic.
- 8 The PCRC may grant leave for evidence that extends beyond the topics set out in the outline to be included in the witness statement if the evidence is relevant to one or more paragraphs of the Terms of Reference. In that event, the witness statement should identify clearly to which paragraph(s) of the Terms of Reference the evidence is intended to relate.

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<sup>1</sup> This Practice Direction was issued on 30 April 2021 and amended on 19 August 2021. A party may request the previous version of this Practice Guideline by contacting the PCRC by email to [solicitorsassisting@pcrc.wa.gov.au](mailto:solicitorsassisting@pcrc.wa.gov.au).

<sup>2</sup> 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](#).

- 9 Evidence included in the witness statement that extends beyond the topics set out in the outline or is not relevant to the Terms of Reference may, in the discretion of the PCRC, be excised from the witness statement or excluded from that witness' evidence-in-chief.
- 10 The rules of evidence do not apply to the PCRC. Nevertheless, a witness statement should be prepared with due regard to the probative value of the evidence and should:
- a. contain direct evidence wherever possible;
  - b. avoid unnecessary statements of conclusion;
  - c. provide the grounds for any statement of belief, opinion or (necessary) conclusion;
  - d. not include secondary evidence of the contents of a document where the document is available to the PCRC;
  - e. be as concise as possible.
- 11 Prior to a witness being called to give evidence to the PCRC, and subject to any orders to the contrary, the Solicitors Assisting the PCRC will provide a copy of the witness' witness statement and an index of all documents referred to in the witness statement to all persons who have been given leave to appear and whose interests may be affected by the matters addressed in a witness statement.
- 12 If an order has been made for a witness to give part or all evidence at a restricted or private hearing, then the witness' witness statement and index of documents (or the relevant parts thereof) will only be distributed to parties given leave to appear at the restricted or private hearing. Witnesses should refer to Practice Direction 2 – General Information with respect to restricted or private hearings.
- 13 A person provided with a copy of a witness statement and/or index of documents:
- a. may not use those documents or their contents for any purpose other than the purpose of that person's appearance before the PCRC: and
  - b. is required to keep those documents and their contents confidential except for the purpose of obtaining legal advice or otherwise with the leave of the PCRC, unless and until the witness statement and/or index are admitted into evidence.
- 14 In circumstances where a witness statement has not been provided, the PCRC may, in its discretion, grant leave to a witness to give oral evidence-in-chief.

#### **PROVIDING WITNESS STATEMENTS TO THE PCRC**

- 15 The witness statement, and an index of all documents referred to in the witness statement, must be provided by the time and date set by the PCRC, unless agreed otherwise with the Solicitors Assisting the PCRC. . In accordance with paragraph 4 of the *Document Management Protocol*, a witness who is providing a witness statement to the PCRC must, before the time and date requested for provision of the witness statement, contact the PCRC by email at [solicitorsassisting@pcrc.wa.gov.au](mailto:solicitorsassisting@pcrc.wa.gov.au) to obtain a link to a secure file transfer means.
- 16 A witness statement and each document referred to within a witness statement is to bear a Document ID in accordance with the *Document Management Protocol*. Each document referred to in the witness statement must be referred to by use of this Document ID. If attachment or exhibit numbers are used, then these must be used in conjunction with the Document ID in parentheses.

- 17 Witness statements, and documents referred to in the witness statement are required to be provided to the Solicitors Assisting the PCRC in electronic format, in a folder including the following:
- a. a copy of the signed witness statement in text searchable PDF format;
  - b. a copy of the final (but unsigned) statement in its native electronic form (for example, in Microsoft Word format);
  - c. a copy of the final (but unsigned) statement in its native electronic form (for example, in Microsoft Word format) that is hyperlinked to each document referred to within it;
  - d. a subfolder named 'Exhibits', containing all documents referred to the statement in a format that complies with the Document Management Protocol but this subfolder should not include a copy of the statement; and
  - e. an 'Index of Documents' in Microsoft Word or Excel format (PDF indices will not be accepted), which must list all documents referred to in the statement, and must contain, at a minimum, the following columns:
    - i. the Document ID;
    - ii. the corresponding attachment or exhibit number, if attachment or exhibit numbers are used;
    - iii. the date of the document; and
    - iv. a description of the document in plain English (the document's electronic file name is not an adequate description).
- 18 For the avoidance of doubt, a witness statement may not be provided by email unless prior approval to do so is granted by the PCRC or for the purpose of amending a witness statement in accordance with paragraphs [20A] to [20C].
- 19 Subject to any contrary order, witness statements provided to the PCRC will be published on the PCRC's website after the witness has given evidence.
- 20 A witness who is opposed to the publication of the whole or a part of their witness statement or referenced documents should apply for an order prohibiting or restricting publication in accordance with the procedure set out in *Practice Direction 2 – General Information*.

#### **AMENDED WITNESS STATEMENTS**

- 20A A witness may amend their witness statement prior to the tendering of that witness statement at a hearing. In those circumstances, an amended copy of the witness statement must be provided to the PCRC by email at [solicitorsassisting@pcrc.wa.gov.au](mailto:solicitorsassisting@pcrc.wa.gov.au), prior to the commencement of the examination of the witness. The amended witness statement provided at this time may be signed or unsigned by the witness.
- 20B The amended witness statement must:
- a. show all amendments in red font, with strike through for any deletions and underline for any additions;
  - b. be amended to read "Amended witness statement of...", on the front page;
  - c. be provided to the PCRC in its native electronic form (for example, in Microsoft Word format) and text searchable PDF; and

- d. be assigned a new Document ID by the party providing the statement in accordance with the Document Management Protocol.

20C A signed copy of an amended witness statement must be provided to the PCRC by email at [solicitorsassisting@pcrc.wa.gov.au](mailto:solicitorsassisting@pcrc.wa.gov.au) as soon as possible after the conclusion of the witness giving evidence.

### **EXAMINATION OF WITNESSES**

- 21 When a witness is called to give evidence before the PCRC, they will adopt their witness statement on oath or affirmation as their evidence-in-chief subject to any order as to excision of the witness statement or exclusion of their evidence-in-chief.
- 22 Where a witness has been granted leave to appear and is legally represented, the witness' counsel will have the witness adopt their witness statement. The written statement of a witness may only be supplemented by further evidence-in-chief with leave of the PCRC.
- 23 Once the witness' evidence-in-chief has been led by the witness' legal representative, Counsel Assisting the PCRC may adduce further evidence from the witness by way of cross-examination of the witness.
- 24 Where the witness is not legally represented, Counsel Assisting the PCRC will lead the evidence-in-chief of the witness and ask the witness to adopt their witness statement. Counsel Assisting the PCRC may then adduce further evidence from the witness by way of cross-examination.

### **CROSS-EXAMINATION OF WITNESSES BY OTHER PARTIES**

- 25 Cross-examination of a witness by the legal representative of a person given to appear will be permitted by leave of the PCRC in circumstances where the PCRC considers that cross-examination will assist the PCRC in its inquiry.
- 26 The person seeking leave to cross-examine a witness will be required to:
  - a. identify the purpose of the cross-examination;
  - b. set out the general areas to be canvassed in cross-examination; and
  - c. provide to the PCRC copies of documents they wish to rely on for the purpose of the cross-examination in advance of the examination of the witness and in accordance with *Practice Direction 3 – Production of Documents and Document Management Protocol*.
- 27 To avoid repetition and duplication during the hearings, it is expected that persons granted leave to cross-examine the same witness will:
  - a. confer with each other and Counsel Assisting the PCRC before the witness is called;
  - b. agree to an efficient and logical order of the cross-examination; and
  - c. if no agreement is reached, request a direction from the PCRC as to the order in which the cross-examinations are to take place.
- 28 Leave to cross-examine will be limited to the matters in issue before the PCRC and subject to any limitations imposed by the PCRC, which may include:
  - a. Restrictions on the matters that may be addressed in cross-examination;

- b. restrictions on the ability to ask questions or canvass matters already asked or covered in prior examinations by any person other than Counsel Assisting the PCRC; and
  - c. the imposition of time limits on the examination.
- 29 A person who has been granted leave to cross-examine a witness must be ready to commence cross-examination as soon as Counsel Assisting the PCRC has completed examination/cross-examination of the witness.
- 30 Once the cross-examination of a witness by all persons granted leave to cross-examine a legally represented witness is completed, the legal representative for the witness may re-examine the witness. Counsel Assisting the PCRC may then re-examine the witness.
- 31 Once the cross-examination of a witness by all persons granted leave to cross-examine a witness who is not legally represented is completed, Counsel Assisting the PCRC may then re-examine the witness.

### **ACCESS TO DOCUMENTS**

- 32 A party granted leave to cross-examine a witness may request access to documents in the custody of the PCRC which are referred to in an index of documents accompanying the witness statement of the witness,
- 33 A request for access to documents framed in general terms will not be granted.
- 34 Any person granted access to or provided with a copy of a document in the custody of the PCRC:
- a. may not use that documents or its contents for any purpose other than the purpose of their appearance before the PCRC; and
  - b. is required to keep that document and its contents confidential except for the purpose of obtaining legal advice or otherwise with the leave of the PCRC, unless and until the witness statement and/or index are submitted into evidence.
- 35 A request for access to documents must:
- a. be lodged with the Solicitors Assisting the PCRC in a timely manner;
  - b. identify the specific document or documents to which access is requested and the basis or bases for the request; and
  - c. acknowledge the requesting party's obligation to keep the requested document or documents confidential unless and until admitted into evidence.

**The Honourable Neville Owen AO**



**The Honourable Carolyn Jenkins**



**Mr Colin Murphy PSM**

**19 August 2021**

