



## Special Commission of Inquiry into Offending by Former Corrections Officer Wayne Astill at Dillwynia Correctional Centre

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# PRACTICE GUIDELINE 2

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## Conduct of hearings

### INTRODUCTION

1. This Practice Guideline relates to the conduct of the Special Commission of Inquiry hearings into offending by former Corrections Officer Wayne Astill at Dillwynia Correctional Centre (**Special Commission**). It should be read in conjunction with the *Special Commissions of Inquiry Act 1983 (NSW) (Act)*, the terms of reference contained in the Letters Patent establishing the Inquiry dated 13 September 2023 and any other Practice Guidelines.
2. This Practice Guideline sets out general guidance about the conduct of Special Commission hearings.
3. This Practice Guideline may be varied or replaced at any time.

### WITNESSES

4. Counsel Assisting and 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 the order in which witnesses are to give evidence; and
  - c. determine which documents are tendered during public hearings.
5. The Special Commission may decide to receive the evidence of a witness orally or by written statement. The Special Commission will decide whether to require a witness giving evidence by written statement to attend for examination or cross-examination.
6. Persons required to give evidence will be provided with a summons to attend and give evidence and will be given appropriate notice of the time and date they are required to attend. Witnesses who are not available during a particular period should give notice to the Solicitors Assisting the Special Commission at the earliest opportunity.



## **Special Commission of Inquiry into Offending by Former Corrections Officer Wayne Astill at Dillwynia Correctional Centre**

7. The procedure for examination of witnesses is as follows (which is subject to change only upon the granting of leave by the Commissioner where he considers the circumstances require):
  - a. Counsel Assisting the Special Commission will call the witness;
  - b. the witness will be invited to take an oath or affirmation;
  - c. Counsel Assisting will examine the witness and may tender the statement of the witness (if any);<sup>1</sup>
  - d. the witness may be cross examined by or on behalf of any person granted leave by the Special Commission who is considered to have a sufficient interest to do so;
  - e. the witness may be examined by his or her own legal representative (if any); and
  - f. Counsel Assisting may re-examine the witness.
8. The Special Commission may:
  - a. limit the particular topics or issues upon which a party can cross examine; and
  - b. impose time limits upon cross examination.
9. Any person wishing to have evidence of a witness or witnesses placed before a hearing must notify the Solicitors Assisting the Special Commission in a reasonable time in advance of the calling of the witness, and provide a signed statement containing their expected evidence. Counsel Assisting will decide whether to call the witness. If Counsel Assisting has declined to call the witness, application may be made to the Commissioner for the witness to give evidence.
10. A copy of any document proposed to be put to a witness must be provided to Counsel Assisting as soon as possible after a decision is made to use the document and in all cases prior to its intended use.
11. The Special Commission will not apply the rule in *Browne v Dunn*, subject to the following:
  - a. if the Special Commission is to be invited to disbelieve a witness, the material grounds upon which it is said that the evidence should be disbelieved should be put to the witness so that the witness may have an opportunity to offer an explanation;

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<sup>1</sup> A witness may be examined by more than one of the Counsel Assisting the Inquiry.



## **Special Commission of Inquiry into Offending by Former Corrections Officer Wayne Astill at Dillwynia Correctional Centre**

- b. the Special Commission expects that, where it is contended that deliberately false evidence has been given, or that there has been a mistake on the part of a witness on a significant issue, the grounds of such contention will be put; and
  - c. what is stated above is not intended to mean that:
    - i. mere inconsistencies and unimportant differences in the evidence should be raised; or
    - ii. once the grounds for disbelieving a witness have been put by one party, other parties need to put them again.
12. Once a witness has been cross examined on a particular issue no further cross examination on that issue will be allowed unless the person wishing to cross examine the witness on that issue can demonstrate that the proposed cross examination differs to a significant degree from the cross examination that has already taken place.

### **TENDERING DOCUMENTS**

13. Subject to the control of the Commissioner, Counsel Assisting will determine which documents are to be tendered, and the time at which they will be tendered.
14. Before the commencement of a public hearing, each person granted leave to appear at that hearing may, at the discretion of the Solicitors Assisting or Counsel Assisting the Special Commission, be given confidential electronic access to certain documents likely to be tendered as exhibits in the public hearing.
15. Any person wishing to have a document placed before a hearing must notify the Solicitors Assisting the Special Commission at a reasonable time in advance of the hearing. Production of additional documents may be requested. Counsel Assisting will decide whether the document is to be tendered. If Counsel Assisting has declined to tender a document, application may be made to the Commissioner for the document to be tendered.

### **NON-PUBLICATION ORDERS AND CLOSED HEARINGS**

17. In an appropriate case, the Commissioner may:



## **Special Commission of Inquiry into Offending by Former Corrections Officer Wayne Astill at Dillwynia Correctional Centre**

- a. direct that a public hearing, or any part of a public hearing, take place in private and give directions as to the persons who may be present during such part of the hearing to be held in private;
  - b. give directions preventing or restricting the publication of evidence given before the Special Commission or of matters contained in documents tendered to the Special Commission;
  - c. direct non-publication of the name, or use of a pseudonym to protect the name of any witness or any person about whom evidence is given.
18. Any person who has been granted leave to appear who seeks a direction for a closed hearing for particular evidence, or a direction for non-publication of particular evidence must (as soon as is reasonably practicable in advance of the hearing) provide Counsel Assisting or the Solicitors Assisting the Special Commission with a copy of the proposed direction sought, the content of the proposed evidence and any submissions in support of the application.

### **ADDRESSES AND SUBMISSIONS ON EVIDENCE**

19. At the conclusion of the evidence at a public hearing and at the discretion of the Commissioner, it will be determined who will have the right to address the Special Commission, when and in what form (e.g. orally or in writing), on what issues and in what order.

22 September 2023