



## NEW SOUTH WALES

*Casino Control Act 1992 (NSW)*  
*Royal Commissions Act 1923 (NSW)*

INQUIRY UNDER SECTION 143 OF THE CASINO CONTROL ACT 1992 (NSW)

### **PROCEDURAL GUIDELINES RELATING TO THE INQUIRY UNDER SECTION 143 OF THE CASINO CONTROL ACT 1992 (NSW)**

#### **General**

1. These Procedural Guidelines relate to the Inquiry established by the Instrument of Appointment (Terms of Reference) issued by the Independent Liquor and Gaming Authority dated 14 August 2019 pursuant to s.143 of the *Casino Control Act 1992 (NSW)* (*Casino Control Act*) to the Honourable P A Bergin SC (the Commissioner).
2. The Commissioner has been appointed to conduct the Inquiry with the powers, authorities, protections and immunities conferred by Division 1 and Division 2 of Part 2 of the *Royal Commissions Act 1923 (NSW)* (*Royal Commissions Act*).
3. The Terms of Reference, these Procedural Guidelines and other information relevant to the Inquiry are available through the website at [www.nswcasinoinquiry.com](http://www.nswcasinoinquiry.com).

#### **Public Hearings**

4. The Terms of Reference provide that hearings are to be held in public unless the Commissioner is satisfied that it is convenient to conduct hearings in private.
5. Public hearings will usually be conducted from 10.00am to 1.00pm and from 2.00pm to 4.00pm. The dates and times for the public hearings will be published on the website.

6. Public hearings will be held at:

Address: Level 4, Chief Secretary's Building, 47 Bridge Street, SYDNEY  
NSW 2000

7. Those present during any hearings are not to film or record any part of the proceedings and are expected to have any mobile telephones and computers on silent mode. Wi Fi will not be made available. However, individuals may use their own portable network adaptors, hot-spots or similar facilities.

### **Applications to appear**

8. The Commissioner may authorise persons to appear and to be legally represented at the Inquiry. In particular, a person may be granted such authority if it is shown that the person is substantially and directly interested in any subject matter of the Inquiry, or that the person's conduct in relation to any such matter has been or is to be challenged to the person's detriment.

#### *To represent a witness while giving evidence*

9. Where a legal practitioner seeks authorisation to appear at the Inquiry for the limited purpose of representing an individual while that individual is giving evidence at the Inquiry and the legal practitioner does not (and in the case of Counsel, the instructing solicitors also do not) act for any other person in relation to the Inquiry:
  - (a) such an application may be made orally immediately prior to the individual being called to give evidence;
  - (b) the legal practitioner must indicate whether he or she does not (and in the case of Counsel, his or her instructing solicitors do not) act for any other person in relation to the subject matter of the Inquiry, and if either or both so act, why it is appropriate for the practitioner to be authorised to appear; and
  - (c) unless the Commissioner determines otherwise, the legal practitioner will be authorised to appear before the Inquiry for the limited purpose of representing the individual while the individual is giving evidence.

### *Other Applications*

10. In any other case, any person or legal practitioner wishing to be granted authorisation to appear at the Inquiry or a specified part thereof should lodge with the Inquiry a written application in the Form annexed to these Guidelines.
11. The outcome of any written application will be notified to the applicant in writing.
12. Nothing in paragraphs 8 to 11 prevents a person from seeking authorisation to appear at any time, and in particular if an initial application has been refused or something has occurred which leads the person to believe that the person's interests may be affected. Any such application should address the matters identified in the Form annexed to these Guidelines and will be dealt with by the Commissioner at such time as the Commissioner considers appropriate having regard to all relevant considerations.

### *Terms of authorisation*

13. Unless the Commissioner otherwise determines, every authorisation to appear is granted on the following conditions:
  - (a) authorisation may be withdrawn by the Commissioner or made subject to altered or additional limitations or conditions at any time;
  - (b) the nature and extent of the participation of the authorised person or authorised legal practitioner (as the case may be) in the Inquiry is subject to the Commissioner's control from time to time;
  - (c) the authorised person or authorised legal practitioner (as the case may be) has no automatic right to examine any witness. Amongst other things, the Commissioner may, depending on the circumstances at the relevant time, direct that there should be no examination of a particular witness by the authorised person or authorised legal representative (as the case may be), or that any such examination shall be limited as to topic, time or otherwise.

## **Witnesses**

14. A witness must take an oath or make an affirmation prior to giving oral evidence at a hearing of the Inquiry.
15. Subject to the control of the Commissioner, Counsel Assisting the Commissioner will determine which witnesses are called and the order in which those witnesses are called and examined. It may be necessary to call some witnesses to give evidence on more than one occasion.
16. The Commissioner may decide to receive the evidence of a witness orally or by written statement or both.
17. Persons required to give oral evidence will be provided with appropriate notice of the time the Commissioner will call upon their Summons to attend to give evidence. Witnesses with a particular period of unavailability should give notice of that unavailability to the Inquiry at the earliest possible opportunity.
18. Witnesses will provide oral evidence by examination by Counsel Assisting.
19. It may be that witnesses will be questioned by or on behalf of any person considered by the Commissioner to have sufficient interest to do so. The witness may then be examined by his or her own legal representative. Counsel Assisting may then question the witness at the conclusion of this process. Duplication and repetition must be avoided.
20. The Commissioner may:
  - (a) limit the particular topics or issues upon which a witness may be examined;
  - (b) impose time limits upon examination of a witness.
21. If the Commissioner 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.
22. Where it is to be contended that deliberately false evidence has been given, or that there has been a mistake on the part of the witness on a significant issue, the grounds of such contention must be put to the witness.

23. Any person wishing to have evidence placed before the Inquiry must notify the Inquiry of the name of the witness and provide a statement containing the evidence the witness wishes to provide signed by the witness unless for good reason that is not possible. Counsel Assisting will decide whether or not the statement of the witness will be tendered and/or whether the witness will give oral evidence. An application may be made directly to the Commissioner for the witness to provide evidence only after the above procedure has been completed.
24. 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.

### **Evidence**

25. Pursuant to s.143(3) of the *Casino Control Act* the Commissioner is not bound by the rules or practice of evidence and may inform herself on any matter and in such manner as the Commissioner considers appropriate.
26. Sub-sections 17(1) to 17(3) of the *Royal Commissions Act* are applicable to persons appearing before or producing documents to the Inquiry.
27. A witness summoned to appear before the Inquiry and/or or to produce documents to the Inquiry is not excused from answering a question or producing documents on the ground of legal professional or other privilege, or self-incrimination, or a duty of secrecy or other restriction on disclosure, or any other ground.
28. There are restrictions on the use to which any answers given or documents produced to the Inquiry may be used against the person in other proceedings.

### **Documents**

29. Unless otherwise ordered or agreed, all documents produced in compliance with a Summons should be produced in accordance with arrangements with the Senior Lawyer of the Inquiry.

30. Subject to the control of the Commissioner, Counsel Assisting will determine which documents are tendered in evidence at the Inquiry and the time at which they will be tendered.
31. The Commissioner will determine which authorised persons, authorised legal representatives and other persons (if any) are to be provided with access to documents.
32. Any application (other than in a hearing) for access by an authorised person, an authorised legal representative or any other person, to documents that have been tendered as exhibits in the Inquiry should be notified to the Inquiry in writing.
33. Prior to the anticipated tender of some documents, those persons considered by the Commissioner to be substantially and directly interested in the subject matter to which the documents relate (or their legal representatives) may be granted confidential access to those documents.
34. Until marked as exhibits in the Inquiry, the contents of any documents to which access has been granted are not to be published to any persons other than persons to whom the Commissioner has granted access and are to be kept confidential and not to be used for purposes other than in connection with the Inquiry.
35. Persons who are granted access to any documents prior to their tender in evidence at the Inquiry are not to provide a copy of those documents or facilitate any person gaining access to any part thereof in respect of which access has not been granted.
36. Any person wishing to have a document placed before the Inquiry must notify the Inquiry by providing a copy of the document to the Inquiry. The production of other documents may then be required. Counsel Assisting will decide whether or not to tender any document. An application may be made directly to the Commissioner to tender a document only after the above procedure has been completed.

### **Transcripts of public hearings**

37. Where a transcript of any part of the Inquiry is made available, any person seeking to make corrections thereto should do so by way of notice in writing to the Inquiry as soon as possible.

38. Oral applications for urgent transcript corrections of significance may be made at hearings of the Inquiry.

### **Publication of evidence**

39. The evidence of any witness to the Inquiry given at a hearing held in public may be published unless a direction is made prohibiting the publication of particular evidence.

### **Non-publication**

40. Pursuant to s.143B(1) of the *Casino Control Act*, the Commissioner may, by order in writing, direct that:

- (a) any evidence given at the Inquiry, or
- (b) the contents of any document, or a description of any thing, produced at the Inquiry, or
- (c) any information that might enable a person who has given or may be about to give evidence at the Inquiry to be identified or located, or
- (d) the fact that any person has given or may be about to give evidence at the Inquiry,

is not to be published at all, or is not to be published except in such manner, and to such persons, as the Commissioner may specify (Non-Publication Direction).

41. Pursuant to s.143B(2) of the *Casino Control Act*, a Non-Publication Direction is not to be given unless the Commissioner is satisfied that the direction is necessary in the public interest or that there are other exceptional circumstances that require the direction to be given.

42. Any application for a Non-Publication Direction or for a hearing or part thereof to be held in private should be notified and made as soon as possible to the Inquiry and, where possible, this should be in writing. The notification and application should clearly identify the material or the part of the hearing (as may be

appropriate) in respect of which the application is sought and the facts, matters, circumstances and grounds on which the application is made.

43. The Commissioner will determine the procedure in respect of any such application, including whether to receive written or oral submissions.

#### **Prior notification of issues**

44. Any authorised person, authorised legal representative or other person who wishes to raise any issue of law or procedure (including, by way of example only, confidentiality issues, Non-Publication Directions and administrative arrangements) should, wherever possible, give the Inquiry written notice of that issue and any contentions to be raised in respect of that issue as soon as possible.

#### **Submissions**

45. The Commissioner may make directions in relation to whether and upon which matters submissions should be made and whether submissions are to be made orally and/or in writing to the Inquiry.
46. The Commissioner may limit the persons who may make submissions and the particular topics or issues that may be addressed. Time or page limits on submissions may also be imposed.

The Honourable PA Bergin SC  
Commissioner  
28 November 2019



**ANNEXURE A- APPLICATION FOR AUTHORISATION TO APPEAR**

**Part 1 – Name and contact details of Applicant**

Name:

Address:

Contact person:

Telephone:

Email:

**Part 2 – Name and contact details of any representing legal practitioner**

Name of counsel (if applicable):

Address:

Telephone:

Email:

Name of solicitor:

Firm name:

Contact person:

Address:

Telephone:

Email:

### **Part 3 – Terms of Reference**

In respect of which particular Terms of Reference does the Applicant claim to have an interest?

### **Part 4 – Nature and extent of interest**

What is the subject matter in respect of which the Applicant claims an interest; and what is the nature and extent of the interest?

## **Part 5 – Assistance to the Inquiry**

Please specify precisely the nature and extent of any assistance that will be provided to the Inquiry if the application is granted?

## **Part 6 – Conflicts**

In the case of an application for authorisation for a legal practitioner to appear, does the practitioner (and in the case of Counsel, his or her instructing solicitors) act for any other person in relation to the Inquiry and the matters the subject of the Inquiry? If so, what information can be provided to the Inquiry such as to enable the Commissioner to determine whether it is appropriate for authorisation to be granted?

**NOTE: Further information may be sought from applicants for authorisation to appear prior to any decision being made as to whether such authorisation will be granted.**