



Hazelwood Mine Fire Inquiry

Practice Direction No.2 – Public Hearing for Term of Reference 6

INTRODUCTION

1. On 26 May 2015, a Board of Inquiry (“the Board”) was constituted by Order in Council to inquire into and report on specified Terms of Reference.
2. This Practice Direction deals with procedural matters relating to a public hearing to be conducted by the Board solely in relation to paragraph 6 of the Terms of Reference, namely:

Whether the Hazelwood Coal Mine Fire contributed to an increase in deaths, having regard to any relevant evidence for the period 2009 to 2014.
3. Further Practice Directions will be issued by the Board in relation to future public hearings concerning other paragraphs of the Board’s Terms of Reference.
4. This Practice Direction is issued under, and should be read in conjunction with, the *Inquiries Act 2014 (Vic)* (“the Act”).
5. This Practice Direction may be varied from time to time. The Board may, at any time, depart from this Practice Direction if it considers it appropriate to do so.

PURPOSE OF THE PUBLIC HEARING

6. The public hearing will be conducted to assist the Board to inform itself in relation to paragraph 6 of the Terms of Reference.

TIME AND PLACE OF PUBLIC HEARING

7. The public hearing will take place on 1, 2, and 3 September 2015 and will be held at Kernot Hall, Corner Princes Drive and Monash Way, Morwell.
8. When confirmed, the hearing times and witness lists for each hearing day will be published on the Board's website at: hazelwoodinquiry.vic.gov.au.

OPEN TO THE PUBLIC

9. Subject to any contrary order of the Board under section 71 of the Act, the public hearing will be open to the public.

RULES OF EVIDENCE

10. Subject to the provisions of the Act and to paragraphs 13-16 of the Terms of Reference, the conduct of the public hearing will be within the discretion of the Board.
11. In accordance with section 61 of the Act, the Board is not bound by the rules of evidence and may inform itself on any matter as it sees fit.

THE EVIDENCE OF WITNESSES

12. Counsel Assisting the Board will identify and contact those persons who they wish to give evidence as witnesses before the Board.
13. A witness should deliver to the solicitor assisting the Board a copy of the witness's statement and a list of all documents that he or she believes are relevant to the evidence. This material should be delivered in a timely fashion pursuant to arrangements reached with counsel and the solicitor assisting the Board.

14. Where the witness, or any organisation with which the witness is associated, is legally represented, the Board expects that the witness's statement will be prepared by the lawyers for the witness or the organisation. The Board expects that the preparation of a witness statement by the witness's lawyers will occur in close consultation with counsel and the solicitor assisting the Board.
15. Where a witness is not legally represented, counsel and the solicitor assisting the Board may assist the witness to prepare his or her statement.
16. Subject to any order concerning confidentiality, all persons who have been given leave to appear and whose interests may be affected by the matters addressed in a witness statement will be given a copy of the statement before the witness is called. The Board will endeavor to deliver the statement a reasonable time before the witness is to be called. The ability of the Board to do so will depend on the degree of cooperation offered by the witness and his or her representatives.

Examination and cross-examination of witnesses

17. All witnesses will be called by Counsel Assisting the Board. As a general rule a witness's evidence in chief will be given by first adopting his or her witness statement.
18. Counsel Assisting may examine (including by cross-examining) the witness further to supplement his or her statement.
19. A witness may be cross-examined by or on behalf of those parties considered by the Board to have sufficient interest in doing so. Any witness who is legally represented may next be examined by his or her own legal representative. Finally, Counsel Assisting may re-examine the witness. At all times, duplication and repetition is to be avoided.
20. Cross-examination of witnesses will be by leave only. No general, open-ended right of examination, cross-examination or tender of evidence will be given to any person or organisation. Subject to general considerations of fairness, the Board may impose conditions or restrictions on leave to cross-examine, including time limits.

21. A party wishing to cross-examine a witness should advise Counsel Assisting, before the witness is called, of the purpose of the proposed cross-examination, the issues to be canvassed and the estimated duration. Counsel Assisting will recommend to the Board whether leave to cross-examine should be granted and, if so, the order in which parties may cross-examine the witness.
22. A copy of any document proposed to be put to a witness in cross-examination must be provided to Counsel Assisting as soon as possible after a decision is made to use the document for this purpose and, in all cases, prior to being put to the witness.

LEAVE TO APPEAR AT THE PUBLIC HEARING

When Leave to Appear is NOT required

23. Any person who, or organisation that, wishes to make a written submission to the Board may do so. No application for leave to appear is necessary in order to make a written submission. The process for making a written submission is outlined on the Inquiry's website at hazelwoodinquiry.vic.gov.au under the link to "Public Submissions".
24. A person who is a witness at the public hearing is not required to seek leave to appear.

When Leave to Appear IS required

25. Leave to appear is required where a person or organisation seeks to appear, other than as a witness, at the public hearing to ask questions of witnesses and/or to make submissions to the Board.

Leave to Appear

26. The Board invites applications for leave to appear from any person or organisation. All applications for leave to appear at the public hearing must be made on the form attached to

this Practice Direction entitled “Application for Leave to Appear at the Public Hearing concerning whether the Hazelwood Coal Mine Fire contributed to an increase in deaths (see paragraph 6 of the Terms of Reference)”.

27. The completed form must be accompanied by a short submission setting out the reasons why the applicant should be granted leave to appear at the public hearing. The submission should address the matters listed in section 62(2) of the Act (set out below at paragraph 31) as relevant and should not exceed 2 pages in length.
28. Any application must be submitted by 4pm on 10 August 2015.
29. An application and submission may be sent via:
 - a. email : justine.stansen@hazelwoodinquiry.vic.gov.au
 - b. post to: Justine Stansen, The Solicitor to the Board, Hazelwood Mine Fire Inquiry, Level 11, 222 Exhibition Street Melbourne 3000.

Determining applications

30. The Board will consider all applications and determine who will be granted leave to appear.
31. In deciding whether or not to allow a person to appear or participate in the public hearing the Board may have regard to the following factors in accordance with section 62 of the Act:
 - a. whether the person or organisation has any direct or special interest in the subject matter of paragraph 6 of the Terms of Reference;
 - b. the likelihood that the Board may make an adverse finding against the person or organisation;
 - c. the ability of the person or organisation to assist the Board in the inquiry into paragraph 6 of the Terms of Reference;
 - d. the age of the person; and
 - e. any other matters the Board considers relevant.
32. The Board may determine applications for leave to appear without any oral hearing and on the basis of the application and submissions provided.

33. The Board will notify the applicant in writing of its determination.
34. A grant of leave to appear:
 - a. grants leave to appear at the public hearing subject to any terms and conditions specified in the grant; and
 - b. includes leave to be legally represented (if the applicant wishes to be represented).
35. The terms and conditions on which leave to appear is granted may include:
 - a. leave to appear with respect to a particular issue or issues;
 - b. leave to appear with respect to the evidence of a particular witness or witnesses;
 - c. the imposition of time or other limitations upon cross-examination, examination or presentation of submissions;
 - d. the provision of prior notice to the Board of documents or other evidence to be tendered or a written outline of any proposed submissions; or
 - e. the requirement that submissions or evidence be presented in writing only.
36. The Board may at any time withdraw leave to appear or make such leave subject to amended or additional terms and conditions.
37. Nothing in paragraphs 25 to 36 above prevents a person or organisation from seeking leave to appear at any time if something has occurred during the public hearing that leads the person or organisation to believe that their interests may be affected.

If leave is granted

38. Any person or organisation granted leave to appear before the Board who wishes to have the evidence of a witness placed before the Board, should notify the solicitor assisting the Board of the name of the witness and provide a signed statement of his or her expected evidence. Counsel or the solicitor assisting the Board or Board staff may interview the witness and take a further statement from him or her. Counsel Assisting the Board will decide whether to call the witness.

39. Any person or organisation granted leave to appear before the Board who wishes to tender a document to the Board should notify the solicitor assisting the Board of the document, and should provide a copy of the document if it has not already been produced to the Board. Counsel Assisting will decide whether to tender the document.
40. Any person or organisation granted leave to appear before the Board who wishes to raise a procedural matter should write to the solicitor assisting the Board identifying the issue to be raised and setting out a brief outline of the submissions the person or organisation proposes to make in relation to the issue.

ADVERSE EVIDENCE

41. A person who or organisation which, to the prior knowledge of Counsel Assisting the Board, will be the subject of adverse evidence to be given at the public hearing will, if practicable, be notified in advance of the evidence that Counsel expects will be given.
42. If adverse evidence is given about a person or organisation who has not received advance notice of the evidence, Counsel Assisting the Board will notify the person or organisation as soon as practicable afterwards, and will provide the person or organisation with a copy of the relevant part of the transcript or other details of the evidence considered appropriate by Counsel Assisting.
43. Section 76 of the Act determines the process the Board must follow if it is considering making an adverse finding against a person.

RESTRICTED PUBLICATION ORDERS

44. The Board may prohibit or restrict publication of information relating to the public hearing in accordance with section 73 of the Act, for example, if prejudice or hardship might be caused to any person or the conduct of the proceeding would be more efficient and effective if such an order were made.

45. Any person or organisation seeking that a restricted publication order be made in respect of particular evidence should notify Counsel Assisting the Board of the evidence concerned and the reasons why it is said that the evidence should not be published. The criteria set out in section 73(2) of the Act should be addressed.

ACCESS TO AND PUBLICATION OF EVIDENCE

46. Subject to paragraphs 44-45 above and any other direction of the Board (for example, as to the redaction of transcripts or witness statements), the Board proposes to adopt the following procedures in respect of evidence given at the public hearing:
- a. transcripts of evidence at the public hearing will be uploaded onto the Inquiry's website as soon as they are available;
 - b. witness statements of witnesses called to give evidence at the public hearing will be available on the Inquiry's website as soon as practicable after the witness has given evidence; and
 - c. documents received into evidence at the public hearing will be available on the Inquiry's website as soon as practicable after the document has been tendered.

CONTACTING THE BOARD

47. Any person wishing to contact the Board about any matter dealt with in this Practice Direction or any other matter concerning the public hearing should contact Justine Stansen, The Solicitor to the Board at justine.stansen@hazelwoodinquiry.vic.gov.au.
48. A reference in this Practice Direction to Counsel Assisting is a reference to Peter Rozen. Mr Rozen may delegate responsibilities under this Practice Direction to Ruth Shann, junior counsel assisting.

Hazelwood Mine Fire Inquiry

Application for Leave to Appear at the Public Hearing concerning whether the Hazelwood Coal Mine Fire contributed to an increase in deaths (see paragraph 6 of the Terms of Reference)

Applications must be submitted by 4pm on 10 August 2015.

Name of person or organisation seeking leave to appear	
Lawyer(s) representing the person or organisation (if any)	
Contact person(s)	
Contact address	(State) (Postcode)
Contact telephone number	(Business) (Mobile)
Contact email address(es)	

Please attach a short submission (no more than 2 pages) setting out the reasons why the applicant should be granted leave to appear at the public hearings.

The submission should address the matters referred to in section 62(2) of the *Inquiries Act* 2014 (Vic) where relevant.

Please lodge this form with the attached submission by sending it via:

- email : justine.stansen@hazelwoodinquiry.vic.gov.au;
- post to: Justine Stansen, The Solicitor to the Board, Hazelwood Mine Fire Inquiry, Level 11, 222 Exhibition Street Melbourne 3000.