



COMMONWEALTH OF AUSTRALIA

COMMISSION OF INQUIRY

MONTARA WELLHEAD PLATFORM UNCONTROLLED HYDROCARBON RELEASE

**PRACTICE NOTE 1**

HEARING ADMINISTRATION

**Authorisation to appear before the Inquiry**

1. Persons or organisations wishing to seek authorisation to appear before the Inquiry should do so by submitting the reasons why they consider they should be authorised to appear in writing to [enquiries@montarainquiry.gov.au](mailto:enquiries@montarainquiry.gov.au), if possible by 8 March 2010 or as soon thereafter as practicable.
2. Subject to the control of the Commissioner, Counsel Assisting will determine what witnesses are called, what documents are tendered to the Inquiry, and in what order they will call and examine witnesses.
3. Authorisation to appear may be withdrawn by the Inquiry, or made subject to altered or additional limitations or conditions at any time.
4. Such authorisation to appear entitles the person/organisation to whom it is granted to participate in the proceedings of the Inquiry, subject to the Inquiry's control and to such extent as the Inquiry considers appropriate. In particular, the Inquiry may:
  - (a) limit the particular topics or issues upon which the person/organisation may examine and cross-examine; and
  - (b) impose time limits upon examination and cross-examination.
5. Counsel for all persons/organisations given authorisation to appear shall give advance notice of any legal issues which they propose to raise. Counsel Assisting will likewise advise other counsel if it appears to them that questions of law may arise in particular situations.

**Application for witnesses to appear before the Inquiry**

6. All witnesses will be called by Counsel Assisting.
7. Any person/organisation who intends to give evidence or have evidence of a witness or witnesses placed before the Inquiry is to notify Counsel Assisting of the names of all such witnesses and provide a signed statement of their expected evidence, if possible in the form of a statutory declaration, on or before close of business 22 February 2010. Counsel Assisting or Inquiry staff may interview such witnesses and take further statements from such witnesses if considered necessary. It is not necessary that any such interviews or the obtaining of such additional statements occur in the presence of the person/organisation, or legal representatives thereof, who sought to have the evidence of such witnesses placed

before the Inquiry. The orderly conduct of the Inquiry will be greatly facilitated if this evidence is made available without delay.

8. Application may be made directly to the Commissioner to call witnesses or place documentary material before the Inquiry only in the following circumstances:
  - (a) application has been made to Counsel Assisting to call such witness or tender such documents which application has been refused;
  - (b) thereafter, the applicant has given to Counsel Assisting written notice of the reasons why such witness' evidence or documentary material should be placed before the Inquiry; and
  - (c) either:
    - (i) Counsel Assisting has reaffirmed his decision not to place the evidence before the Inquiry; or
    - (ii) two working days have passed since the notice referred to in (b) has been received by the Inquiry without response from Counsel Assisting.

### **Adverse material**

9. Subject to any confidentiality order to contrary effect, the Solicitor for the Inquiry will give to any person/organisation who might be adversely affected (through their legal representative if they have one) notice of adverse material that the Inquiry receives pursuant to directions 7 and/or 12 hereof, on or before 24 February 2010 (or as soon thereafter as practicable), thus drawing their attention to the material which might be adverse to them.
10. Lawyers for persons/organisations who might be adversely affected by evidence will be given a right of appearance whilst any such evidence is being called.
11. If persons or organisations potentially adversely affected by material wish to deny or dispute material provided to them by Counsel Assisting or the Solicitor for the Inquiry, they shall file a statement specifying the factual matters which are disputed, and particulars of their account with respect to those disputed matters, on or before 4 March 2010.

### **Examination and cross examination of witnesses**

12. Any person summonsed by the Inquiry to give evidence is requested to provide a signed statement of the evidence they are able to give about matters relevant to the Inquiry's terms of reference, on or before 22 February 2010. If a person summonsed by the Inquiry does not produce such a statement, the evidence they are permitted to give in a public hearing will ordinarily be confined to:
  - (a) answering questions asked by Counsel Assisting;
  - (b) answering questions asked by any person/organisation given authorisation to cross-examine; and
  - (c) clarification of any issues arising from (a) and (b) above.
13. Any witness who is legally represented who has been examined (including cross-examined) by Counsel Assisting may next, with the authorisation of the Commissioner, be cross-examined by or on behalf of any person/organisation considered by the Inquiry to have sufficient interest in so doing. The witness's own legal representative may examine to clarify

any issues raised by any cross-examination. Counsel Assisting may then ask questions. At all times, duplication and repetition is to be avoided.

14. Counsel Assisting the Commission and any person/organisation with a demonstrated sufficient interest to do so, and granted authorisation by the Commissioner, may cross-examine a witness. Cross-examination will be limited to the matters in dispute, and may otherwise be restricted by the Commissioner in accordance with the power conferred by s6FA of the Royal Commissions Act 1902.
15. Persons other than Counsel Assisting will ordinarily not be authorised to cross-examine a witness unless and until they have provided to Counsel Assisting a signed statement of evidence advancing material contrary to the evidence of that witness, in accordance with the timeframes set out in the above directions (or as otherwise agreed with Counsel Assisting). Any person providing such a statement will be called by Counsel Assisting and asked to adopt that statement and may be examined by Counsel Assisting.
16. In advance of a person giving adverse evidence being called, Counsel seeking to cross-examine on behalf of a person or organisation potentially affected will be required to indicate the areas of conflict by reference to the paragraphs in the disputing statement(s).
17. The general principles which will guide the Commissioner in relation to whether authorisation to cross-examine a witness will be granted are:
  - (a) If there is a disputed issue of fact relevant to a matter which the Commissioner regards as material to any issue he must determine, cross-examination will ordinarily be allowed.
  - (b) If a person gives evidence of an adverse matter, which evidence is not denied by another person, cross-examination will ordinarily not be allowed.
  - (c) If the disputing evidence is a matter of comment, as distinct from raising a factual conflict, cross-examination will not be allowed.
  - (d) If a person gives evidence of a fact, and the contestant states that he has no recollection of the alleged fact, cross-examination will ordinarily not be allowed, unless there are surrounding circumstances casting doubt upon the veracity of the evidence.
  - (e) If there are grave allegations against a person which may be diminished or eliminated by an attack on the credit of the witness giving the evidence, cross-examination will be allowed.
18. When a witness has adopted the whole or part of a witness statement, then those parts which have not been challenged by cross-examination may be accepted by the Commissioner as an accurate statement of fact or opinion, if he considers it appropriate to do so.
19. A copy of any document proposed to be put to a witness in any examination or 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 its intended use.
20. Procedures will be implemented by the Inquiry to ensure that confidentiality is maintained with respect to the identity of persons who assist the Inquiry and the information and documents which they provide, insofar as this is appropriate and consistent with the discharge of the Inquiry's functions. Any person who feels particular concern in this area may communicate his or her concern directly to Counsel Assisting.

## **General hearing arrangements**

21. The Inquiry proposes to sit from Monday to Friday of each week, commencing 15 March 2010. Usual hearing hours will be from 9.30am to 1.00pm and from 2.00pm to 4.30pm. The hearing room will be at Level 1, 51 Allara Street, Canberra City.
22. The Inquiry's proceedings will be as orderly and expeditious as possible. The Inquiry will endeavour to ensure that those who may be adversely affected by the evidence are treated fairly, while protecting confidentiality where that is appropriate.
23. In respect of all oral and documentary evidence, the following practices will apply until vacated or varied either generally in or respect of evidence or categories of evidence:
  - (a) The testimony of any witness given in public session or documents tendered before the Inquiry may be published unless an order is made prohibiting the publication of particular evidence.
  - (b) Any person/organisation or the legal representative thereof having been authorised to appear before the Inquiry may inspect and take extracts from any document tendered in evidence for the purpose of appearance before the Inquiry.
24. The Inquiry accepts no obligation to specifically notify persons/organisations with authorisation to appear or other interested parties of the times and places of its hearing. Details of the public hearing arranged from time to time may be obtained from the Inquiry's Executive Officer or the Inquiry's website.
25. Transcript of the hearing will, subject to any confidentiality orders made, be placed on the Inquiry's website as soon as it is available.
26. It is envisaged that in due course after the public hearing a direction will be given requiring that Counsel Assisting provide to the Executive Officer of the Inquiry for publication on the Commission's website submissions setting out the findings of fact which they contend ought be made, in light of all the information placed before the Inquiry, in relation to the Inquiry's Terms of Reference.
27. It is envisaged that in due course after the public hearing a direction will also be made requiring an interested person or organisation to provide to the Executive Officer of the Inquiry their submissions in reply, specifying:
  - (a) any disputed finding and the basis for such dispute; and
  - (b) any additional finding(s) sought.

## **Variations of practices**

28. The Inquiry reserves the right at any time to vary the above practice directions.