

## 2018 Murray-Darling Basin Royal Commission

Letters Patent issued 23 January 2018

### Protocol No. 3

#### Commencement of hearings

1. The Murray-Darling Basin Royal Commission (**Commission**) has determined to hold a schedule of hearings prior to the delivery of its report on 1 February 2019.
2. Public hearings will be set in blocks according to topic, where possible. A list of the topics to be addressed at hearings will be published on the Commission's website at [www.mdbrc.sa.gov.au](http://www.mdbrc.sa.gov.au).
3. The dates for each block of hearings will be published on the Commission's website fourteen (14) days in advance of their commencement, together with (where possible) a list of persons from whom it is intended to lead evidence.
4. Public hearings will commence on 18 June 2018 in relation to the construction of the *Water Act 2007* (Cth) and the process that was used to establish the water recovery target of 2,750GL. A list of the persons from whom it is intended to lead evidence will be published on the Commission's website on or about 4 June 2018.
5. On 18 June the Commission will deal with all outstanding applications for leave to appear before the Commission. Directions about applications for leave to appear are set out in paragraphs 7 to 15 below.
6. After the Commission has dealt with applications for leave to appear, the Commissioner will make some preliminary remarks. Counsel Assisting the Commission will then make an opening address in which he will outline the issues which are presently of interest to the Commission and which are likely to be the subject of investigation. Counsel Assisting will outline the issues which are likely to be addressed in the Commissioner's report.

## Leave to appear

7. Any person or organisation (**person**) seeking leave to formally appear before the Commission must lodge a written notice of intention (notice of intention) as soon as possible.
8. A notice of intention applies only to such persons who wish to appear before the Commission to make submissions and/or call evidence and/or question a witness. It does not apply to persons who wish to give evidence before the Commission.
9. The notice of intention should comprise a brief outline of no more than three pages identifying the topic or topics of interest, the term or terms of reference in which the person claims an interest, an explanation of the nature of that interest and the reasons why they should be given leave to appear before the Commission.
10. The Notice of intention can be downloaded from the Commission's website at [www.mdbrc.sa.gov.au](http://www.mdbrc.sa.gov.au) and emailed to the attention of Ms Carolyn Lee, Director at [mdbroyalcommission@mdbrc.sa.gov.au](mailto:mdbroyalcommission@mdbrc.sa.gov.au).
11. Notices of intention should be received by the Commission no later than 11 June 2018, or 5 business days prior to the date of the hearing in which they wish to appear.
12. The Commission may deal with an application administratively, in which case the person will be advised of the result of the application in writing or by email.
13. If the Commission does not deal with an application administratively, the person should attend at 10am on 18 June 2018, or 10 am on the day of the hearing in which they wish to appear, and be prepared to make oral submissions in support of their application for leave to appear. The outstanding requests for leave to appear will be determined at that time.
14. Subject to any order to the contrary, a party granted leave to appear may appear at hearings of the Commission at which evidence will be taken or submissions received relating to issues in which the party granted leave has a substantial and legitimate interest.

- 15.** Participation in such hearings by the questioning of witnesses, the tender of oral or written evidence or the presentation of submissions will be subject to the grant of further leave, which may be granted on terms which may include (without limitation) the following:
- (1) limitation of the particular topics or issues upon which the party may question witnesses, tender evidence or present submissions;
  - (2) the imposition of time or other limitations for questioning witnesses or presentation of submissions;
  - (3) the provision of prior notice to the Commission of documents or other evidence to be tendered or a written outline of any proposed submissions;
  - (4) the requirement that submissions or evidence be presented in writing only.
- 16.** Nothing in paragraphs 7 to 13 prevents a person from seeking leave to appear at any time if something that has occurred during the hearings leads the person to believe that his or her interests may be affected.

### **Conduct of hearings**

- 17.** The Commission will sit on the days published on its website, and on other days, if required. The Commission's usual hearing hours will be from 10.00 am to 1.00 pm and from 2.00 pm to 4.30 pm.
- 18.** Details of the location of public hearings will appear on the Commission's website at [www.mdbrc.sa.gov.au](http://www.mdbrc.sa.gov.au).
- 19.** The Commission accepts no obligation to notify parties given leave to appear before it, or other interested parties, of the times and places of its hearings. However, a person who, in the opinion of Counsel Assisting the Commission, may be substantially and directly interested in evidence to be produced to the Commission at a hearing will, if practicable, be notified in advance that it is intended to produce the evidence to the Commission.

20. Subject to the discretion of the Commissioner, Counsel Assisting the Commission will determine what witnesses are called, what documents are tendered to the Commission, and in what order they will call and question witnesses.
21. A person who, to the prior knowledge of Counsel Assisting the Commission, will be the subject of adverse evidence given before a public hearing of the Commission will, if practicable, be notified in advance of the evidence. If adverse evidence is given about a person who has not received advance notice of the evidence, the Commission will notify the person as soon as reasonably convenient afterwards, and will provide the person with a copy of the relevant part of the transcript or other details of the evidence considered appropriate by Counsel Assisting. The person will be given an opportunity to contest the evidence if the person so requests.

### **The evidence of witnesses**

22. The Commission will identify and contact those persons who wish to give evidence as witnesses before the Commission. Counsel Assisting will propose an outline of the proposed evidence in chief of each of these witnesses.
23. In circumstances where a witness has provided a written submission to the Commission, the Commission will advise them whether a separate witness statement is required.
24. Where no prior submission has been provided, the Commission will liaise with the witness or their legal representative/s (if they are represented) about the provision of a witness statement.
25. Where a witness is not legally represented, Counsel and Solicitors Assisting the Commission may assist the witness to prepare his or her statement/provide information regarding the process of giving evidence.
26. All witness statements prepared will be published on the website, at the Commissioner's discretion.

### **Option for legal representation**

27. Any person giving evidence before the Commission may be represented before the Commission by counsel or a solicitor.
28. 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, where possible, a copy of the statement before the witness is called. The Commission will endeavour to deliver the statement a reasonable time before the witness is to be called. The ability of the Commission to do so will depend on the degree of co-operation offered by the witness and his or her representatives.

### **Questioning of witnesses**

29. All witnesses will be called by Counsel Assisting the Commission. As a general rule a witness's evidence in chief will be given by first adopting his or her witness statement. Counsel Assisting may ask the witness further questions to supplement his or her statement.
30. Any witness who is legally represented may next be questioned by his or her own legal representative, and then questioned by or on behalf of any person considered by the Commission to have sufficient interest in doing so. The witness's own legal representative and finally Counsel Assisting the Commission may re-question. At all times, duplication and repetition is to be avoided.
31. Questioning of other than one's own witness will be by leave only. No general, open-ended right to question or tender evidence will be given to any person. Subject to general considerations of fairness the Commission may impose conditions or restrictions on leave to question a witness if the interests of efficiency and justice so demand.
32. A copy of any document proposed to be put to a witness during questioning must be provided to Counsel Assisting the Commission 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.

### **Applications to call a witness or tender a document**

- 33.** Any person granted leave to appear before the Commission who wishes to have the evidence of a witness placed before the Commission should notify the Solicitors Assisting the Commission of the name of the witness and provide a signed statement of his or her expected evidence. Counsel or Solicitors Assisting the Commission or Commission staff may interview the witness and take a further statement from him or her. Counsel Assisting the Commission will decide whether to call the witness.
- 34.** Any person granted leave to appear before the Commission who wishes to tender a document to the Commission should notify the Solicitors Assisting the Commission of the document, and should provide a copy of the document if it has not already been produced to the Commission. Counsel Assisting will decide whether to tender the document.
- 35.** If Counsel Assisting the Commission has declined a person's request to call a witness or tender a document and the person persists in their request, the person should write to the Solicitors Assisting setting out the reasons why the witness should be called or the document tendered, for consideration by the Commissioner. The Commissioner will consider whether to grant leave in the exercise of his discretion.

### **Procedural matters**

- 36.** Prior to giving evidence, all witnesses will be required to take an oath or swear an affirmation.
- 37.** If a person who has been granted leave to appear intends to raise a procedural matter, the person should write to the Solicitors Assisting the Commission identifying the issue to be raised and setting out a brief outline of the submissions the person proposes to make in relation to the issue.
- 38.** A party who wishes to raise such an issue should give the Commission as much notice as possible of that intention.

39. Without limiting its generality, the term “procedural matters” includes objections to or restrictions on the production or use of documents; matters relating to evidence to be given by the witnesses including as to confidentiality and matters relating to the way in which witnesses are questioned; applications for corrections to transcript; and administrative arrangements for the conduct of hearings.

#### **Summons to witnesses/for documents**

40. All witnesses summoned to attend before the Commission will be provided with reasonable expenses incurred in complying with the summons, as would be allowed in the Supreme Court of South Australia.
41. Information regarding the types of expenses available to be reimbursed, and a witness expense claim form, is available on the website at [www.mdbrc.sa.gov.au](http://www.mdbrc.sa.gov.au).
42. Requests for payment of witness expenses (supported by supporting receipts/documents) should be forwarded to the attention of Ms Carolyn Lee, Director at [mdbroyalcommission@mdbrc.sa.gov.au](mailto:mdbroyalcommission@mdbrc.sa.gov.au).

#### **Counsel and solicitors assisting the Commission**

43. A reference in this protocol to Counsel Assisting the Commission is a reference to Richard Beasley SC, Senior Counsel Assisting the Commission. Senior Counsel Assisting may from time to time delegate responsibilities under this protocol to Junior Counsel Assisting. Junior Counsel Assisting the Commission is Mr Sean O’Flaherty.
44. A reference in this protocol to the Solicitors Assisting the Commission is a reference to the Senior Instructing Solicitor. Correspondence to the Solicitors Assisting the Commission should be marked to the attention of Ms Joanne Masters and sent to [joanne.masters@mdbrc.sa.gov.au](mailto:joanne.masters@mdbrc.sa.gov.au) or, at GPO Box 1445, Adelaide SA 5001.

#### **Variation of practices**

45. The Commission reserves the right at any time to vary the practices set out in this protocol.