



Commissions of Inquiry Act 1951 (Chapter 31)

**ROYAL COMMISSION OF INQUIRY
INTO PROCESSES AND PROCEDURES FOLLOWED BY THE GOVERNMENT OF
PAPUA NEW GUINEA INTO OBTAINING THE OFF-SHORE LOAN FROM THE
UNION BANK OF SWITZERLAND AND RELATED TRANSACTIONS**

**PRACTICE NOTE
*No. 3 of 2021***

Introduction

1. In this practice note:

“Commission” is a reference to the Commission of Inquiry described in the heading as established on 19 August 2019.

“Inquiry” is a reference to the subject matter of the Commission.

“Counsel” means a person admitted to practice in Papua New Guinea or, if the witness is outside Papua New Guinea, a person entitled to practice as a lawyer in that jurisdiction.

“Counsel Assisting” means the Counsel Assisting the Commission as appointed.

2. This practice note repeals and replaces Practice Notes 1 and 2.
3. Section 5 of the *Commissions of Inquiry Act 1951* (the “Act”) provides that the Commission may make such rules, not inconsistent with the terms of the instrument of its appointment, for the conduct of proceedings before it, for the times and places of its meetings and for adjournment, as it thinks proper.
4. These rules of procedure are made by the Commission to apply to the Commission of Inquiry established by the Prime Minister on 30 August 2019 and directed to inquire into, make findings and report on the processes and procedures followed by the Government of Papua New Guinea in obtaining the off-shore loan from the Union Bank of Switzerland in 2014 and related transactions.

Public hearings

5. Public hearings are held at *APEC House*, Paga Ring Road, Port Moresby. Unless directed otherwise by the Commission, witnesses and legal representatives present in Port Moresby are expected to attend in person; all others may attend and give evidence by remote video.
6. Dates for public hearings will be communicated on the Commission website. The substantive hearings of evidence for the remaining phases of the Commission are 7-18 June (Port Moresby/Brisbane) and 12-31 July 2021 (Port Moresby) and all witnesses and persons granted leave to appear should prepare accordingly.

7. Any person can attend a public hearing subject to paragraph 54 hereof, unless directed otherwise by the Commission.
8. Unless directed otherwise, public hearings of the Commission will be live streamed via the Commission Facebook [page](#).
9. Unless directed otherwise, transcripts of public hearings will be made available on the Commission website as soon as practicable following the relevant hearing.
10. In view of the COVID pandemic, hearings may be conducted by video link (using Zoom) and/or telephone and will be video recorded with a transcript taken. The Commission may sit at other locations and use video-conference and telephone facilities, as it sees fit.
11. Parties granted leave to appear will be provided with details to access the Commission's video-conference platform, to participate in public hearings in real time.

Leave to appear

12. Any person who has a *bona fide* interest in the subject matter of the Inquiry may make an application to the Commission for leave to appear, either in person or by counsel.
13. Any person who has been granted leave to appear need not re-apply for leave. This includes any person who has appeared before the Commission in answer to a summons and been given leave.
14. Any application for leave under paragraph 12 above, should be lodged in writing as soon as practicable and no later than 30 May 2021, with the Secretary of the Commission. A written application seeking leave to appear should either be emailed to the Secretary to the Commission, Mr Mathew Yuangu, at secretary@coiubsl.com or filed in hard copy at the Office of the Commission at *APEC House*, Paga Ring Road, Port Moresby.
15. A written application seeking leave to appear shall include:
 - (a) an outline of no more than three pages identifying the term or terms of reference ([Terms of Reference | Coiubsl](#)) in which the person or entity claims an interest, explaining the nature of that interest and giving reasons why they should be given leave to appear;
 - (b) provide contact details; and
 - (c) be accompanied by a signed affidavit by the person claiming a *bona fide* interest in the subject matter of the Inquiry.
16. The Commission may deal with any application seeking leave to appear under paragraph 12 above without oral hearing, in which case there will be written or email communication to the person or their counsel representing about the application.
17. An application seeking leave to appear under paragraph 12 may be listed for oral hearing at such time as determined and communicated by the Commission at *APEC Haus*, Paga Ring Road, Port Moresby or at such other location as the Commission directs. The Commission may invite an applicant to make oral submissions in support of their application for leave to appear.

18. Subject to any direction to the contrary, a person or party who has satisfied the Commission that they have a *bona fide* interest in the matter and has been granted leave to appear having regard to section 8 of the Act may appear at public hearings of the Commission at which evidence will be taken or submissions received relating to issues in which the party has been granted leave.
19. Participation in public hearings, further to the granting of leave to appear, including the examination of witnesses or the presentation of oral submissions, requires the grant of further leave by the Commission, which leave may be granted on terms including (without limitation) the following:
 - (a) limitation of the particular topics or issues upon which the party may examine or present submissions;
 - (b) the imposition of time or other limitations upon examination or presentation of submissions;
 - (c) the provision of prior notice to the Commission of documents or other evidence relevant to the terms of reference to be referred to in examination or submissions together with written outline of any proposed submissions; and
 - (d) the requirement that submissions be presented in writing only.
20. Applications for leave under paragraph 19 should be made in writing at least one business day prior to the relevant hearing where possible. The application may be determined by the Commissioners in chambers or at a public hearing. In an urgent or special case, parties granted leave to appear may make an oral application to participate in a public hearing.
21. Nothing in this Practice Note prevents a person from seeking leave to appear at any time if something that has occurred during the hearing leads the person to believe their interest may be affected and which would entitle the person to appear or be represented by counsel.

Conduct of hearings

22. The Commission's usual public hearing hours will be from 9:30 am to 12:30 pm and from 2:00 pm to 4:30 pm. The Commission may sit different hours. The Commission will endeavour to notify persons given leave to attend or other interested persons of the timing and places of its hearing; but such notice may not always be able to be given on the website.
23. Subject to the control of the Commission, Counsel Assisting the Commission will determine which witnesses are called at a public hearing and when, and what documents are sought to be tendered to the Commission.
24. The Commission may request or direct a person summoned to appear as a witness to provide a synopsis of the evidence they propose to give.

Etiquette for participating in a virtual hearing

25. Etiquette for participating in a virtual hearing is the same as participating in an 'in person' hearing. Only one person should speak at a time and each person must take care not to speak over other participants, especially the Commissioners. Only persons seated at the bar table

(either in person or electronically) or a witness may speak, by leave only. All other persons in attendance at the hearing must maintain silence at all times.

26. When a person is not speaking, his or her microphone is to be muted to minimise unnecessary background noise.
27. (a) There may be a delay between the individual speaking and the sound being heard by the other participants. Allowances are to be made during the hearing as appropriate to accommodate any delay being experienced to avoid one participant talking over another.
(b) If any difficulty in communication is experienced, the person may make use of the “raised hand” symbol which will be monitored by Commission staff.
(c) Visual and audio quality can also be affected by a number of factors which can lead to unexpected loss of connection or deterioration to an unacceptable level of picture or sound. Should that occur the person should endeavour to communicate with Commission staff as soon as possible by telephone if necessary on +675 340 4876 or +675 323 6487.

Witnesses who appear by video-conference

28. With the Commission’s leave, a witness may give evidence by telephone if suitable video conference technology is not available. Such circumstances are likely to be exceptional. Any witness summonsed who considers that she or he may not be able to give evidence by video conference must contact the Technical Assistants and International Solicitors Assisting the Commission as soon as possible at coisolicitorsassisting@minterellison.com.
29. Specific arrangements for a witness to give evidence including testing the video-conference connection will be provided ahead of testimony.
30. Each witness appearing by video-conference must:
 - a) join the video-conferencing platform from a quiet and appropriate location;
 - b) be alone in the room where they connect to the video-conferencing platform, unless they are accompanied by an information technology officer to assist with the video conference, a representative of the Commission or a support person / legal representative with appropriate leave to appear; and
 - c) join the video-conferencing platform at least 15 minutes before their scheduled start time to enable final arrangements for their testimony to be confirmed.
31. A Commissioner or Commission Associate will administer the appropriate oath or affirmation to a witness. Any witness appearing virtually and intending to swear an oath should ensure there is a Holy Bible or other holy book available for this purpose.
32. Any witness who wishes to have a support person or legal representative present in the room while they give evidence must seek approval from the Commission at least 24 hours before giving evidence. Any support person or legal representative of a witness must not communicate with a witness while the witness is giving evidence without leave from the Commission.

Applications to call a witness or tender a document

33. Any person who has satisfied the Commission that they have a *bona fide* interest in the matter and has been granted leave to attend the Commission and who wishes to have the evidence of a witness placed before the Commission should notify the Secretary of the Commission of the name of the witness in writing and provide a signed synopsis of his or her expected evidence. The Commission's Solicitors or Counsel Assisting the Commission may interview the witness and take a further statement from that person. Counsel Assisting the Commission will then decide whether to call the witness.
34. Any person who has satisfied the Commission that they have a *bona fide* interest in the matter or has been granted leave to attend the Commission and who wishes to tender a document to the Commission should notify the Secretary of the Commission in writing of the document and should provide a copy of the document if it has not already been produced to the Commission. Counsel Assisting the Commission will decide whether to seek to tender the document.
35. If Counsel Assisting the Commission has declined a person's request to call a witness or tender a document, the person may write to the Secretary to the Commission setting out the reasons why it is contended that the witness should be called or the document tendered.
36. Should Counsel Assisting the Commission affirm their decision not to place the evidence before the Commission, the person concerned may apply to the Secretary of the Commission for the application for leave to call the witness or tender the document to be determined by the Commission. The Commission may determine that application without oral hearing or in such other way as it directs.

Publication of evidence

37. Where the Commission considers it appropriate, statements and documents tendered in public hearings of the Commission will be made available on the Commission website. It is anticipated that this will be the usual course for statements and documents.
38. Proposed evidence and proposed statements which have not been formally or publicly tendered will be made available, where the Commission considers it appropriate, electronically via a secure website to persons with leave to appear. The documents contained in this link are confidential and should be treated as such and not be shared unless and until publicly tendered in a hearing of the Commission.
39. The Commission reserves the right to restrict access to documents tendered to it, where it deems appropriate.

Searching and obtaining copies of Commission's official records of proceedings

40. The Commission keeps official records of proceedings in various forms, including audio, video, physical and electronic records. A transcript is kept of audio recordings.
41. Any person with a *bona fide* interest in the proceedings, including a witness or potential witnesses and their legal representatives may, with the permission of the Commission's Secretary, search and obtain copies of official records.

42. It is not the case that a witness or potential witness will be expected to seek, search and obtain copies of all or every record. Only those records that are relevant to their evidence or proposed evidence should be sought to be searched and copies obtained.

Persons with relevant information

43. Any person who has any information relevant to any of the Terms of Reference, whether that information relates to a person or to a document or thing, should contact the Secretary to the Commission to discuss.

Examination of witnesses

44. All witnesses will be called by Counsel Assisting the Commission who will generally examine the witness first.
45. Any application for the further examination of the witness's own legal representative, or by or on behalf of any person considered by the Commission to have sufficient interest in doing so will be determined by the Commission in accordance with paragraph 19 of this Practice Note.
46. Any application under paragraph 19 of this Practice Note will need to identify the topics on which leave is sought to examine. The Commission may impose such conditions or restrictions on that leave as it sees fit in the interests of efficiency and fairness.
47. A copy of any document proposed to be put to a witness in further examination must be provided to Counsel Assisting the Commission as soon as possible after a decision is made to use the document for that purpose and in all cases well prior to being put to the witness.
48. Following any further examination Counsel Assisting the Commission may re-examine the witness.

Procedural Matters

49. If a person who has satisfied the Commission that they have a *bona fide* interest in the matter or has been granted leave to appear intends to raise a procedural matter, the person should write to the Secretary of 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.
50. A person who wishes to raise such an issue should give the Secretary to the Commission as much written advance notice as possible.
51. Without limiting its generality, the term "procedural matters" includes objections to or restrictions on the production or use of documents, matters relating to the way in which witnesses are to be examined, applications for corrections to any transcript and administrative arrangements for the conduct of hearings.

Media

52. Media will be allowed access to public hearings. The media must respect the integrity of the proceedings and do nothing to interfere with the conduct of proceedings. Cameras will not be allowed in the hearing room during the conduct of hearings, unless specifically allowed by

direction of the Commission. The public hearings will generally be recorded and live-streamed.

Counsel Assisting the Commission

53. A reference in this Practice Note to Counsel Assisting the Commission is to Dr James Renwick CSC SC, Dr Dominic Katter, and, or Mr Levente Jurth; or such other Counsel Assisting as may be appointed.

Presence of Children

54. Due to the nature of various matters being inquired into, unless specifically allowed by direction of the Commission, children shall not be allowed into the hearing room during Commission hearings.

Variation of practice

55. The Commission may vary the practices set out in this practice note.

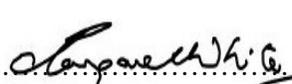
Effect

56. This *Practice Note No. 3 of 2021* is effective from the date of signing.

57. Practice Notes No. 1 of 2019 and No. 2 of 2021 are repealed from the date of signing of this *Practice Note*.


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Chief Sir Salamo Injia Kt GCL
Commissioner and Chairman
Dated: 11 May 2021




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The Honourable Margaret White AO
Commissioner
Dated: 11 May 2021

