## **What do I need to know about Royal Commissions?**

* A Royal Commission is a type of public inquiry. Public inquiries are temporary ad hoc bodies appointed by executive government to provide advice or to investigate some issue. Members are drawn from outside government; have public processes; seek community input and release their reports.
* The legislation to establish a Royal Commission gives the Commission broad coercive powers of investigation (e.g. ability to call and cross-examine witnesses, obtain evidence, rights of entry, phone-tapping) while also providing protection to witnesses and inquiry members from legal action such as defamation.

## **What to expect from the Royal Commission?**

It’s important that NDS members have a good understanding of what to expect of the processes involved, in order to prepare for the Royal Commission.

### **Inquisitorial Process**

* Royal Commissions have extensive powers, including requiring witnesses to give evidence in person and by statements, and to produce documents and information.
* Commissioners will direct the areas of investigation and have wide discretion but within the terms of reference.
* Commissioners appoint Counsel Assisting, who will present the evidence and lead the cross-examination of witnesses on behalf of the Commission.

### **Documents and Information**

* Recent Royal Commissions have involved sector wide requests for voluntary production of data and information from a wide range of providers. This is followed by notices to compel production of that information where providers refused to respond.
* Notices to produce documents issued by Royal Commissions tend to be very broad in scope. They often have a very short time frame.
* Members can rely on legal professional privilege as a reasonable excuse to refuse the production of documents, but only if the privilege claim is made early. The Commission is likely to issue a practice note explaining how it will deal with privilege claims.

### **Witnesses**

* The Royal Commission may initially invite certain witnesses for interviews in private sessions (although it cannot compel this).
* The Royal Commission may issue notices to potential witnesses compelling them prepare a statement outlining their evidence. As a witness you can work with your own (or your organisation’s) lawyers and counsel to prepare this statement.
* If the Royal Commission requires witnesses to appear at a hearing, it will issue summonses to appear.
* The witness statement is usually submitted and then as a witness you are examined by Counsel Assisting, and then cross-examined by other parties authorised to do so.
* Evidence given by a witness may not be used in criminal or civil proceedings against the witness but it can be used more broadly (e.g. against an organisation).

### **Findings**

* After evidence is completed, Counsel Assisting makes submissions on the findings to be considered by the Commission.
* Each party who appears at the Royal Commission may also make any submissions in response to the findings as part of submissions in reply.
* The Royal Commission will then publish its findings that are delivered to the Government and made public, once they are tabled in Parliament.

### **Free legal helpline**

Facilitated by Holman Webb Lawyers, the national helpline allows NDS Organisational Members a free over-the-phone 15-minute initial consultation on any business-related issue. Holman Webb Lawyers will respond to queries within 24 hours (where possible). The helpline operates during business hours (8:30am-6:00pm, Australian Eastern Time).

### **For more information:**

Contact the NDS Membership Team for further information: membership@nds.org.au or 02 6283 3205.

This information is provided as general information to members only. It does not take the place of formal legal advice and any member with concerns about any issue arising out of or related to the Royal Commission is encouraged to seek their own independent legal advice.