

BALRANALD SHIRE COUNCIL

PUBLIC INQUIRY

INFORMATION PAPER

1. WRITTEN SUBMISSIONS

The Commissioner has published notices in local newspapers calling for submissions to the Inquiry. The Commissioner encourages submissions on matters falling within the Terms of Reference of the Inquiry as soon as possible.

The Terms of Reference and the terms of the public notice appear at the end of this Information Paper.

Date for receipt

Submissions should be in writing and be provided by 29 April 2019.

The Commissioner may accept late submissions and/or call for further written submissions.

No written acknowledgement of submissions will be provided.

Anonymous submissions

The Commissioner asks that persons making written submissions identify themselves.

The provision of anonymous submissions may limit the Commissioner's ability to obtain a fuller understanding of the issues raised or to test the evidence. While the Commissioner may take any material into account for the purposes of the Inquiry, the provision of anonymous submissions may carry less weight than other submissions.

Requests for anonymity

In exceptional circumstances, the Commissioner will consider any request by a person making a submission that his or her name to be suppressed or otherwise protected from publication or disclosure. The Commissioner will consider any such requests on a case by case basis. This may assist Council staff, as the *Public Interest Disclosures Act 1994* does not apply to submissions/disclosures made to the Inquiry.

Protection from defamation

There are protections available to persons making a submission to the Inquiry against potential liability for defamation in respect of matters contained in the submission, provided the material is relevant to the Terms of Reference.

Submissions from the Council, Councillors, Council Staff, Government Agencies and the Public

The Commissioner encourages submissions from:

- the Council,
- individual Councillors,
- Council's General Manager,
- senior Council staff,
- other Council staff,
- Office of Local Government,
- Department of Industry, and
- interested members of the public.

Any submission should be relevant to the Terms of Reference.

Councillors and Council employees have no additional privileges or protections over and above other persons generally in respect of any submissions they may choose to make.

The attention of staff and councillors is drawn to earlier comments in this paper regarding the operation of the *Public Interest Disclosures Act 1994*.

Public availability and inspection of written submissions

Generally the Commissioner proposes that submissions to the Inquiry will be made publicly available. When deciding whether to do so, the Commissioner may weigh the likely public benefit gained from publication against any damage that may arise from publication.

The Commissioner may also withhold from public display any part of a submission considered by him to be patently defamatory in nature or irrelevant to the Terms of Reference.

The overriding concern of the Commissioner is to encourage persons who have information relevant to the terms of reference of the Inquiry to come forward and give that information to the Inquiry, in the knowledge that they will not suffer recriminations or other liability as a result.

Arrangements will be made for interested persons to inspect the submissions locally. Additionally, they may be published on the Inquiry website.

2. PUBLIC HEARINGS

The processes of the Inquiry will include public hearings in the local area. Details of the venue and times of these public hearings will be announced shortly and will be advertised by public notice in the same newspapers as the original Notice of Public Inquiry was published.

Form of public hearings

The Commissioner may regulate or determine the procedures to apply to the conduct of the Inquiry, subject to the provisions of section 438U of the *Local Government Act 1993* and the

applicable parts of the *Royal Commissions Act 1923*. The Commissioner therefore proposes to avoid undue formality in the public hearings.

The Commissioner intends to give all persons appearing during the public hearings a fair hearing. There is no requirement or expectation that persons giving evidence will be legally represented. See, however, under the heading “Legal representation” below.

Submissions at the public hearings

The Commissioner requests that interested parties lodge written submissions even if the submissions are intended to be supported by an oral presentation at the public hearings.

The Notice of Public Inquiry invites persons making written submissions to indicate, at the same time, whether they wish to appear in person at the public hearings. This is for the purpose of assisting the Commissioner to identify the likely number of persons who wish to give oral evidence at the hearings, and to thereby assist the orderly functioning of the public hearings phase of the Inquiry.

As noted above, the Commissioner encourages those persons who would like to make an oral submission to the Inquiry to also make a written submission. However it is not essential for persons who would like to appear at the public hearings to make an advance written submission.

Persons who would like to make oral submissions at the public hearings should contact the Inquiry by 29 April 2019 and should provide a short outline of the matters that they wish to address. Such requests can be included in a written submission or made separately in writing to the Office of the Commissioner. A failure to give such notice alone will not, however, mean that such a person would on that account alone be denied the opportunity to appear at the public hearings.

The Commissioner will determine who she wishes to hear evidence from during the public hearings and will make arrangements for their attendance.

At the commencement of the hearings, the Commissioner may hear submissions from those wishing to give oral evidence only, provided that they can satisfy the Commissioner that they are substantially and directly interested in the subject matter of the Inquiry, or that their conduct in relation to any such matter has been challenged to their detriment.

Voluntary attendance at the public hearings

Persons having information relevant to the Terms of Reference of the Inquiry are encouraged to come forward voluntarily.

Compulsory attendance and production of relevant documents

If necessary the Commissioner may summon any person to attend the Inquiry to give evidence and/or to produce any documents or other things in the person’s custody or control relevant to the Terms of Reference of the Inquiry.

Legal representation

While the Commissioner wishes to avoid undue formality in the proceedings (see under the heading “Form of public hearings” above), the Commissioner recognises that some persons may be directly and personally affected by the Inquiry. Any request by persons appearing or proposing to appear at the public hearings that they be legally represented will be considered on this basis. This may be allowed for example, where persons are substantially and/or directly interested in the subject matter of the Inquiry, or where a person’s conduct in relation to any such matter has been challenged to the person’s detriment.

Legal representation may involve the legal representatives being given a right of appearance at the hearing and with the leave of the Commissioner questioning persons appearing and make submissions to the Commissioner.

The Commissioner has no power to make orders providing financial assistance to persons appearing or wishing to appear at the hearing to meet the cost and expense of legal representation.

Witness expenses

The Commissioner has no power to make orders providing financial assistance or for the payment of allowances to any witness summoned to appear or voluntarily appearing at the public hearings. This applies also, for example, to travel and accommodation expenses.

Protection from defamation

Persons appearing at and making oral submissions to the Commissioner at the public hearings are protected from potential liability for defamation in respect of any submissions given to the Inquiry. This is the case whether the appearance of the person is voluntary or made under compulsion. However, to obtain any protections, any submission written or oral must be relevant to the Terms of Reference of the Inquiry and persons must avoid making malicious statements.

Sworn evidence

Persons appearing at the public hearings will be required to give evidence on oath or by an affirmation. Witnesses will be required to take an oath or provide an affirmation. Persons are reminded that an affirmation carries the same consequences as an oath.

Continued attendance – persons who have been summoned to attend

Any witness who has been summoned to appear during the public hearings must appear on the day required and thereafter until the Commissioner excuses the witness from further attendance.

Private hearings

The Commissioner has been appointed to conduct a public inquiry in this matter. On the other hand, in exceptional circumstances, the Commissioner may exercise her discretion to hear oral submissions from a person wishing to make such submissions in confidence. If any such hearing is conducted, members of the public, including the media, will not be permitted to attend.

A person wishing to make an oral submission in confidence will be expected to submit a strong argument supporting the claim. An alternative to appearing at a public hearing is to make a written submission.