



## Hazelwood Mine Fire Inquiry

### Guideline – Public Hearings

#### Hearing dates

1. The Board will commence public hearings at 20 Hazelwood Road, Morwell on Monday 26 May 2014. The hearings will conclude no later than Friday 20 June 2014.

#### Leave to appear

2. The Board invites applications for leave to appear at the public hearings from any person or organisation (persons) who has a direct or substantial interest in the Board's terms of reference. A person against whom the Board might make an adverse finding will have a direct or substantial interest.
3. Any person seeking leave to appear before the Board must lodge written notice of that intention by 4.00 pm on Monday 12 May 2014. The notice should comprise a brief outline of no more than two pages identifying the term or terms of reference in relation to which the person claims an interest, explaining the nature of that interest and stating reasons why the person should be given leave to appear before the Board. Full contact details must be included.
4. The Board will deal with straightforward applications for leave to appear administratively, in which case the person will be advised of the result of the application in writing by Friday 23 May 2014.
5. If a person has not been advised that their application has been dealt with administratively, they should attend the first day of the Board's public hearings on Monday 26 May 2014 and be prepared to make brief oral submissions in support of their application for leave to appear.

6. Unless the Board directs otherwise, a party granted leave to appear may appear during the Board's public hearings in relation to issues in which the party has a direct or substantial interest. Participation in those hearings by the cross-examination of witnesses, the tender of evidence or the presentation of submissions will be subject to the grant of further leave, which may be granted on terms which may include the following:
  - (1) limitation of the particular topics or issues on which the party may cross-examine, tender evidence or present submissions;
  - (2) the imposition of time or other limitations upon cross-examination, evidence in chief or presentation of submissions;
  - (3) the provision of prior notice to the Board 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.
7. Nothing in paragraphs 2 to 6 prevents a person from seeking leave to appear at any time if something has occurred during the hearings leads the person to believe that the person's interests may be affected.

## **Conduct of hearings**

8. The Board will generally sit from Monday to Friday each week during which public hearings are scheduled. The Board's usual hearing hours will be from 10.00 am to 1.00 pm and from 2.00 pm to 4.30 pm. The Board may vary these hearing days or hours as required.
9. The Board may be constituted by one or more members of the Board during public hearings, at the discretion of the Board.
10. Details of the public hearings to be held by the Board will be published on the Inquiry website at [hazelwoodinquiry.vic.gov.au](http://hazelwoodinquiry.vic.gov.au).
11. The Board is not responsible for notifying parties given leave to appear before it, or other interested persons, of the details of its hearings. However, a person who, in the opinion of counsel assisting the Board, may be substantially and directly interested in evidence to be presented to the Board at a hearing will, if practicable, be notified in advance that it is intended to present that evidence to the Board.
12. Subject to the control of the Board, counsel assisting the Board will determine what witnesses are called, what documents are tendered in and in what order they will call and examine witnesses.

13. The details of evidence to be presented to the Board will not be published in advance of the hearing at which it is presented.

## **The evidence of witnesses**

14. Counsel assisting the Board will identify and contact those persons who they wish to give evidence as witnesses before the Board. Counsel assisting will propose an outline of the evidence in chief sought from each of these witnesses.
15. A witness should deliver to the solicitor assisting the Board a copy of the witness's statement and a list of all documents that he or she believes are relevant to the evidence. This material should be delivered in a timely fashion pursuant to arrangements reached with counsel and the solicitor assisting the Board.
16. Where the witness, or the organisation to which the witness belongs, is legally represented, the Board expects that the witness's statement will be prepared by the lawyers for the witness or organisation. The Board expects that the preparation of a witness statement by the witness's lawyers will occur in close consultation with counsel and the solicitor assisting the Board.
17. Where a witness is not legally represented, counsel and the solicitor assisting the Board may assist the witness to prepare his or her statement.
18. 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 a copy of the document before the witness is called. The Board will endeavour to deliver the statement a reasonable time before the witness is to be called. The ability of the Board to do so will depend on the degree of cooperation offered by the witness and his or her representatives.

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

19. All witnesses will be called by counsel assisting the Board. As a general rule a witness's evidence in chief will be given by first adopting his or her witness statement.
20. Counsel assisting may examine (including by cross-examining) the witness further to supplement his or her statement.
21. A witness may be cross-examined by or on behalf of those parties considered by the Board to have sufficient interest in doing so. Any witness who is legally represented may next be examined by his or her own legal representative. Finally counsel assisting may re-examine the witness. At all times, duplication and repetition is to be avoided.

22. Cross-examination of witnesses will be by leave only. No general, open-ended right of examination, cross-examination or tender of evidence will be given to any person. Subject to general considerations of fairness the Board may impose conditions or restrictions on leave to cross-examine, including time limits.
23. A party wishing to cross-examine a witness should advise counsel assisting, before the witness is called, of the purpose of the proposed cross-examination, the issues to be canvassed and the estimated duration. Counsel assisting will recommend to the Board whether leave to cross-examine should be granted and, if so, the order in which parties may cross-examine the witness.
24. A copy of any document proposed to be put to a witness in cross-examination must be provided to counsel assisting the Board 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**

25. Any person granted leave to appear before the Board who wishes to have the evidence of a witness placed before the Board should notify the solicitor assisting the Board of the name of the witness and provide a signed statement of his or her expected evidence. Counsel or the solicitor assisting the Board or Board staff may interview the witness and take a further statement from him or her. Counsel assisting the Board will decide whether to call the witness.
26. Any person granted leave to appear before the Board who wishes to tender a document to the Board should notify the solicitor assisting the Board of the document, and should provide a copy of the document if it has not already been produced to the Board. Counsel assisting will decide whether to tender the document.

### **Adverse evidence**

27. A person who, to the prior knowledge of counsel assisting the Board, will be the subject of evidence to be given at a public hearing of the Board will, if practicable, be notified in advance of the evidence being given.
28. If adverse evidence is given about a person who has not received advance notice of the evidence, counsel assisting the Board 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.
29. The person will be given an opportunity to contest the evidence if the person so requests.

## **Publication of evidence**

30. The evidence of any witness called and any document tendered during a public hearing may be published by the Board on its website, unless a direction is made that particular evidence not be published.
31. Transcripts of evidence in public hearings will generally be uploaded to the Board's website as soon as they are available, subject to any non-publication direction made by the Board.
32. Any person seeking a non-publication direction in respect of particular evidence should notify counsel assisting the Board of the evidence concerned and the reasons why it is said that the evidence should not be published. In determining whether to make a non-publication direction, the Board will consider whether the public interest in publishing the evidence is outweighed by the reasons put forward in support of non-publication.
33. If the Board has made a non-publication direction in relation to particular evidence, the Board may hear that evidence in private. In that event, the Board may give leave to parties with a substantial and direct interest in the evidence to be present while the evidence is given.

## **Procedural matters**

34. If a person who has been granted leave to appear intends to raise a procedural matter, the person should write to the solicitor assisting the Board 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.
35. A party who wishes to raise such an issue should give the Board as much notice as possible of that intention.
36. 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 examined and cross-examined, decisions of counsel assisting not to call a witness or tender a document, requests for non-publication directions, applications for corrections to transcript and administrative arrangements for the conduct of hearings.

## **Counsel and solicitor assisting the Board**

37. A reference in this guideline to counsel assisting the Board is a reference to Melinda Richards SC, senior counsel assisting the Board. Senior counsel assisting may delegate responsibilities under this practice note to junior counsel assisting, Peter Rozen.

38. A reference in this guideline to the solicitor assisting the Board is a reference to Justine Stansen. Correspondence should be marked to the attention of Justine Stansen, solicitor assisting, and sent to [justine.stansen@hazelwoodinquiry.vic.gov.au](mailto:justine.stansen@hazelwoodinquiry.vic.gov.au).

### **Variation of practices**

39. The Board may vary the practices set out in this guideline at any time.