

Written Evidence from Dr Emma Ireton (STI0029)

Further to the oral and written evidence I provided to the committee on amendment to the mandatory requirement for warning letters, and the discussion during Alex Burghart's oral evidence to the Committee's on 29 April 2024 on this topic, I thought it might be helpful to provide the committee with an example of legislation from another jurisdiction that provides an effective alternative to the current approach of rules 13-15 Inquiry Rules 2006.

Whilst the Australian Royal Commission Act 1902 is widely considered to be due for review and updating, at the state level, Victoria introduced a new Inquiries Act in 2014. Section 36 of that Act ensures that requirements for fairness and natural justice are satisfied by requiring that a witness is made aware of any proposed criticism in advance of it being published by an inquiry, and is given the opportunity to respond, but without prescribing the way in which that must be achieved.

Section 36 of the 2014 Act provides:

- (1) If a Royal Commission proposes to make a finding that is adverse to a person, the Royal Commission must be satisfied that the person—
 - (a) is aware of the matters on which the proposed finding is based; and
 - (b) has had an opportunity, at any time during the course of the inquiry, to respond on those matters.
- (2) A Royal Commission must consider a person's response under subsection (1)(b) (if any) before making a finding that is adverse to the person.
- (3) If the Royal Commission includes a finding that is adverse to a person in its report, the Royal Commission must fairly set out the person's response under subsection (1)(b) (if any) in the report. "

As a result, an inquiry convened under the 2014 Act may choose to satisfy this requirement by the use of warning letters, and warning letters continue to be used in many cases.

However, as this is discretionary, it provides the inquiry with sufficient flexibility to adopt an alternative approach in circumstances where it considers it more appropriate to do so and thereby also provides the opportunity to save significant associated time and cost.

8th May 2024