

Practice Note (G-02) – Private Inquiries

Background

1. The Victorian Commission for Gambling and Liquor Regulation Act 2011 (the Act) states that inquiries conducted for the purpose of making findings or determinations in certain matters must be held in public unless the Commission determines that there are special circumstances requiring that the inquiry (or part of it) should be conducted in private (private inquiry).
2. Section 28(2) of the Act lists matters for which the Commission must conduct an inquiry in public, unless special circumstances apply.
3. Additional provision with respect to inquiries for contested liquor applications is made by section 47(3A) of the Liquor Control Reform Act 1998 (LCR Act).
4. This Practice Note sets out the Commission's standard practice when deciding whether or not to hold a private inquiry.
5. Practice notes are approved by the Commission to promote consistency in the way the Commission conducts hearings and inquiries. However, at its absolute discretion, the Commission may vary the operation of a practice note where it considers that the circumstances make it appropriate to do so.

When can the Commission conduct an inquiry in private?

6. The interests of justice generally require that legal proceedings be conducted in public. The public interest usually requires that decision making by public officials and regulatory agencies is open to public scrutiny.
7. The Commission may direct that an inquiry be a private inquiry if it considers that there are special circumstances, being:
 - (a) to prevent the unreasonable divulgence of information relating to the personal affairs of any person (including a deceased person); or
 - (b) it is otherwise in the interests of justice, or the public interest, to conduct a private inquiry.
8. For an inquiry conducted when determining a contested liquor application, the Commission may also hold a private inquiry if the Commission determines that:
 - (a) confidential information will be disclosed at the inquiry;
 - (b) it is in the public interest to conduct the inquiry in private; or
 - (c) it is in the interests of justice to conduct the inquiry in private.
9. A party to, or witness before, an inquiry may, at any time, request the Commission to conduct a private inquiry. Where such a request is made, the Commission may:
 - (a) conduct a preliminary hearing to determine whether to hold a private inquiry; and
 - (b) require the person requesting a private inquiry to make submissions and provide evidence in support of their request.

Unreasonable divulgence of information relating to personal affairs?

10. In considering whether a public inquiry would involve the unreasonable divulgence of personal affairs, the Commission will take into account the nature of the information and the circumstances of the person it relates to. For example, disclosure might be unreasonable where:
- (a) the information relates to alcohol abuse or problem gambling and disclosure would cause humiliation or embarrassment to an individual; or
 - (b) the information that may be divulged would be regarded as sensitive information under privacy law (for example: health information, information about racial or ethnic origin, political opinions or affiliations, religious beliefs or affiliations, philosophical beliefs, sexual preferences or practices or criminal record) and disclosure would be likely to cause disadvantage to an individual.
11. Information relating to the personal affairs of a person would not usually include information about the business, financial or commercial affairs of company or other business structure. However, there may be circumstances where disclosure of such information may involve unreasonable disclosure of information relating to an individual's personal affairs.

Otherwise in the interests of justice or public interest

12. In some circumstances, the interests of justice or public interest may necessitate a private hearing. For example, disclosure of evidence or information given at a public inquiry would be likely to:
- a) prejudice the fair trial of any person
 - b) disclose the identity of a confidential source of information relating to criminal law enforcement
 - c) prejudice the proper enforcement of the law or the protection of public safety
 - d) create a risk to the health or safety of any person
 - e) put a person in breach of a legally binding secrecy or confidentiality obligation
 - f) cause distress or embarrassment to a complainant or witness in proceedings involving a sexual or family violence offence.

Effective Date: This practice note was approved by the Commission on 23 March 2017 and applies to all inquiries commenced after this date.