



Public Inquiry into the Norfolk Island Regional Council

Information paper

Making a Submission and Public Hearings for the Inquiry

This paper provides guidance on how to make a submission. It also provides further information on the formal Inquiry process.

Written submissions

The Commissioner encourages people who would like to make submissions on matters within the Terms of Reference of the Inquiry to do so in writing and preferably by email. If email access is not available submissions can be sent by post, however, the Inquiry is aware that there could be considerable delay in post from Norfolk Island to mainland Australia and prefers to receive submissions by email.

How can I make a submission?

Submissions should be made by email or, if that is not possible, by post (noting again that there could be a considerable delay in the transmission of any written submission by post from Norfolk Island to mainland Australia).

You can make a submission by emailing NIRCpublicinquiry@infrastructure.gov.au.

Your submission should:

- (a) state in as much detail as necessary the information you would like to provide to the Inquiry;
- (b) attach relevant documents;
- (c) identify, as best as you can, how the information relates to the Inquiry's Terms of Reference.

You can make more than one submission. You may wish to send separate emails about different matters or add to information you have already provided.

How long do I have to make a submission?

The closing date for submissions is 7 May 2021. A formal call for public submissions was made through a public notice published in the Norfolk Islander News on 10 April 2021.

The Commissioner may accept late submissions and/or call for further written submissions. People seeking to make a late submission will need to apply for an extension of time prior to the closing date – no later than 6 May 2021 - and requests will be considered on their merits.



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What should I consider when preparing a submission?

The scope of the Inquiry's investigations is limited to the Terms of Reference of the Inquiry. The Inquiry cannot investigate or make findings in relation to any matter outside its Terms of Reference.

The Inquiry will only be investigating and making findings that respond to the Terms of Reference.

This means that to be of assistance to the Inquiry, your submission must be relevant to the Inquiry's Terms of Reference.

Terms of Reference

The Terms of Reference www.regional.gov.au/territories/norfolk_island/public-inquiry-nirc are in 2 parts (and each part has subparts):

To inquire and report to the Assistant Minister for Regional Development and Territories (Minister) with respect to whether, in exercising its functions pursuant to sections 21, 22, 23 and 24 of the <i>Local Government Act 1993</i> (NSW) (NI) (Act):	
ToR 1	the NIRC and its governing body, since 2016, have managed, and are managing, the finances of the NIRC in accordance with the guiding principle in section 8B(c) of the Act to have effective financial and asset management, including sound policies and processes for the following:
	ToR 1(a) performance management and reporting, as they relate to effective financial and asset management;
	ToR 1(b) asset maintenance and enhancement, as they relate to effective financial and asset management;
	ToR 1(c) funding decisions, as they relate to effective financial and asset management;
	ToR 1(d) risk management practices, as they relate to effective financial and asset management.



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ToR 2		the governing body of the NIRC has, since 2016, complied with its obligations under sections 223(1)(d) and (l), to:
	ToR 2(a)	ensure as far as possible that the council acts in accordance with the principles set out in Chapter 3 and the plans, programs, strategies and policies of the council, as they relate to effective financial and asset management;
	ToR 2(b)	be responsible for ensuring that the council acts honestly, efficiently and appropriately, in relation to effective financial and asset management.

Is your submission relevant to TOR1?

In general terms, to be relevant to ToR 1, the information you provide must relate to each of the following matters:

- events that occurred in the period from 1 July 2016, when the NIRC was established, to 4 February 2021, the day before it was suspended (the **Defined Period**).
- events that relate to the NIRC and/or the members of the governing body during the period.
 - The governing body is made up of the elected representatives of the NIRC i.e. the councillors.
 - The NIRC itself is something else; it is the council itself and includes actions taken by staff of NIRC, the general manager and the administrative structure of the council. This means that the conduct not only of the councillors but also of individuals who occupy a position within the administrative structure of the NIRC is of relevance to the Inquiry.



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- whether the NIRC and the councillors, when carrying out the statutory functions of the NIRC, had processes in place and made decisions that gave effect to s 8B(c) of the *Local Government Act 1993* (NSW) (NI), including whether the NIRC and its councillors have sound and effective financial and asset management policies and processes in place with respect to:
 - (i) performance management and reporting,
 - (ii) asset maintenance and enhancement,
 - (iii) funding decisions,
 - (iv) risk management practices.
- whether the NIRC and the councillors made financial and asset management decisions that were consistent with the required policies and processes.

Is your submission relevant to ToR 2?

ToR 2 in part focuses attention on whether the governing body of the NIRC acted in accordance with the principles set out in Chapter 3 of the *Local Government Act* in so far as they relate to effective financial and asset management. As noted above, an aspect of effective financial and asset management is that the NIRC had in place 'sound policies and processes' relating to specified matters.

To be relevant to ToR 2, the information you provide must relate to:

- the actions and decisions of the councillors of the NIRC during the Defined Period.
- whether the actions of the councillors sought to ensure that, as far as possible, the NIRC acted in accordance with the principles set out in Chapter 3 of the *Local Government Act* and the plans, programs, strategies and policies of the council as they relate to effective financial and asset management.
- whether in the Defined Period the governing body of the NIRC fulfilled its responsibility to ensure that the council acts honestly, efficiently and appropriately in relation to effective financial and asset management.

Will an anonymous submission be considered?

In your submission you should identify yourself. This will enable any follow up or clarification on matters raised to occur and assist in determining who should appear as a witness at the Inquiry. If this is not done, the Commissioner may take any information in the material in the submission into account for the purposes of considering the Terms of Reference for the Inquiry. However, because your submission cannot be tested by further inquiry, it may carry less weight than other submissions.



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Can I request anonymity?

Yes. If you make a submission you can request to have your name withheld and protected from publication or disclosure. The Commissioner may in appropriate circumstances agree to the request.

Will I be protected from defamation?

People making a written submission to the Inquiry are protected from potential liability for defamation in respect of anything contained in that submission, at least in so far as the material is relevant to the Terms of Reference for the Inquiry. If you wish to make submissions you should feel free to put to the Commissioner all matters that are relevant to the Terms of Reference. The Commissioner will be the arbiter, at least in the first instance, of relevance.

Who should make a submission?

The Commissioner encourages submissions from all people who can contribute to addressing the Inquiry's Terms of Reference including:

- The Council
- Individual councillors
- Council's General Manager
- The Council and Island administrators
- Council staff
- The Department of Infrastructure, Transport, Regional Development and Communications
- Interested members of the public.

Who will see my submission?

Written submissions will be examined and investigated by Inquiry staff and the Commissioner. Information contained in written submissions can be used to form the basis of evidence that will be led at the public hearings.

Written submissions will not be made public, however where written submissions make allegations that affect third parties, it is likely that the substance of the allegations will be raised with those persons as a means of ensuring procedural fairness to all involved.

All submissions will form part of the records of the Inquiry and be retained as such.



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Are there protections for Council Staff and Councillors?

No. There are no additional privileges or protections over and above other persons making a submission.

Production of documents

Can the commissioner compel the production of documents?

Yes. The Commissioner can compel the production of documents by a notice in writing called a summons.

If you are served with a summons, it is an offence for you not to produce documents in your custody or control which you are required by the summons to produce unless you have a reasonable excuse.

The hearings

Public hearings

The formal public hearings will take place on Norfolk Island during the week commencing 31 May 2021. Supplementary public hearings will be held in Sydney for witnesses not residing on Norfolk Island and are tentatively scheduled to commence the week of Monday 7 June 2021.

Details of the venue and times for the formal public hearings are included in the General Practice Direction.

The Commissioner is conscious that people may wish to make oral submissions in support of their written submissions and that they have an opportunity to do so. Where appropriate the Commissioner will make herself available to hear from persons outside normal office hours due to work or other essential commitments.

Can I give evidence at the public hearings?

The Commissioner will summon a person to attend the Inquiry at the designated time and location and to give evidence and produce any documents in the person's custody or control relevant to the Inquiry.

If you are served with a summons, it is an offence for you not to attend the Inquiry unless you have a reasonable excuse.

Decisions about the people who will be called to give evidence at the public hearings will be made by Counsel Assisting the Inquiry. Counsel Assisting will call all relevant witnesses.



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If you believe you should give evidence as a witness you should indicate this in your written submission or contact the Inquiry Secretariat by no later than 14 May 2021, which is approximately 14 days prior to the hearings commencing. This will enable Counsel Assisting the Inquiry to consider your request and facilitate orderly planning of the hearings.

If a person is summoned to attend to give evidence, can they refuse to answer a question put to them?

No, except in limited circumstances (including if you have a reasonable excuse).

Following the public hearings, will there be an opportunity to make submissions?

Yes. Following the public hearings, Counsel Assisting will make written submissions about findings that should be made based on the evidence presented at the Inquiry. All relevant parties, particularly those about whom adverse findings might be made, will be entitled to make submissions in response.

May I observe the Public Hearings?

Except in unusual and exceptional circumstances, the public hearings of the Inquiry will be open to the public to attend and observe. The evidence adduced at the hearings, including both documents tendered and a transcript of oral evidence will be published on the Inquiry web-page. After the evidence has concluded, the written submissions of Counsel Assisting and all relevant parties will also be published on the Inquiry web-page.

Can I make an oral submission only?

The Commissioner encourages persons to make submissions in writing. It is not necessary that people who appear at the public hearings make a written submission in order to appear. However, those people wishing to only make oral submissions should be aware that the Commissioner is not obliged to automatically give a right of appearance to all of those wishing to appear at the public hearings. Those wishing to make oral submissions only must be able to demonstrate to the satisfaction of the Commissioner that they are substantially and directly interested in the subject matter as set out in the Terms of Reference for the Inquiry.

Those seeking to make oral submissions only to the Commissioner must seek authorisation to appear by 14 May 2021 (see the General Practice Direction). In their application for authorisation to appear they must in part 5b of the application provide an outline of the topics they wish to address.



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May I have a private hearing?

Whilst this is a public inquiry, in any appropriate and/or exceptional circumstances the Commissioner will exercise her discretion about the need for a private hearing. If any private hearing is conducted members of the public will not be permitted to attend.

Can I apply to be represented at the public hearings?

Yes.

If you believe you may be directly affected by the Inquiry, you may choose to have legal representation. If you do seek to be represented whilst giving evidence at the public hearings, your lawyer will need to seek leave from the Commissioner to appear on your behalf.

Is their financial assistance to attend the hearings?

The Commissioner has no power to make orders providing financial assistance or for the payment of allowance to any person summoned to appear or voluntarily appear at the public hearings including any travel and accommodation expenses.

What is the protection from defamation?

People, appearing at public hearings and making oral submissions to the Commissioner 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. People wishing to make submissions should, however, confine their submissions or evidence to matters within the Terms of Reference of the Inquiry and avoid making malicious statements.

Will I be protected from intimidation?

The Inquiry has powers to act if a person attempts to intimidate or threaten a witness, or otherwise tries to deter a witness from giving evidence. A person cannot interfere with the process of giving information.

If I am called as a witness what will my appearance at the Public Inquiry involve?

You will be required to give evidence either on oath or by affirmation. An affirmation carries with it the same consequences as an oath. No exceptions from the swearing of an oath or the making of an affirmation can or will be given.

Every witness who has been summoned to attend the Inquiry must appear on the day required, and thereafter until the Commissioner excuses the witness from further attendance. In scheduling witnesses to give evidence the Inquiry will seek to meet the availability of particular witnesses, but this may not always be possible.



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Will I be cross examined if I am a witness?

People who have been given a right of appearance by the Commissioner, and any legal practitioner which the Commissioner authorises to represent them, may, with the leave of the Commissioner, cross examine any witness on any matter which the Commissioner deems relevant to the Inquiry.

Key dates

Submissions close Friday 7 May 2021.

Applications for extension of time to make a written submission must be made by Thursday 6 May 2021.

Applications to give oral evidence only, must be made by Friday 14 May 2021 to be considered for authorisation.

Individuals who believe they should give evidence as a witness should contact the Inquiry Secretariat by no later than 14 May 2021.

The Public Hearings will be held in the week commencing Monday 31 May 2021 on Norfolk Island. Supplementary public hearings will be held in Sydney for witnesses not residing on Norfolk Island and are tentatively scheduled to commence the week of Monday 7 June 2021. Details of dates and times can be found in the General Practice Direction.

Further assistance

Any questions relating to submissions, public hearings and the Inquiry more generally may contact the Secretariat:

- **Email:** NIRCpublicinquiry@infrastructure.gov.au
- **Mail:** NIRC Public Inquiry, Office of the Commissioner, GPO Box 594, Canberra, ACT, 2601