**Form 34**

Rule 476(3)

**COMMISSION TO EXAMINE WITNESSES**

To [*names and addresses of commissioners*] named by [*specify party*] and to [*names and addresses of commissioners*] named by [*specify party*]

With trust in your integrity, the Supreme Court of Tasmania has appointed you to have the power and authority to examine witnesses on behalf of the [*parties at whose instance commissioners appointed*] at [*place*] before you or any 2 of you, so that one commissioner only on each side be present and act at the examination.

You are ordered and authorised as follows:

1. Each of the [*parties*] is to be at liberty to examine –

(a) orally; and

(b) upon interrogatories; and

(c) orally on the subject matter of any interrogatory or arising out of an answer to it –

each witness produced on behalf of the party and, if a witness is cross-examined, to re-examine the witness orally.

2. Each of the [*parties*] is to be at liberty to cross-examine –

(a) orally; and

(b) upon cross-interrogatories; and

(c) orally on the subject matter of any interrogatory or arising out of an answer to it –

each witness produced on behalf of any other party.

3. Each oral question and its answer is to be recorded in writing and returned with the commission.

4. Any clerk who makes the record referred to in paragraph 3 is to first take the clerk's oath in the form set out below or make an affirmation or promise to similar effect in accordance with the law of the place where the examination is conducted.

5. At least [*number*] days before the examination of a witness, notice in writing –

(a) signed by one of the commissioners of the party on whose behalf the witness is to be examined; and

(b) stating the time and place of the intended examination; and

(c) stating the name of the witness intended to be examined –

is to be given to each of the commissioners of the other party by delivering it personally or by leaving it at the usual place of abode or business of the commissioner.

6. If the commissioners of a party neglect to attend in accordance with a notice under paragraph 5, one of the commissioners of the party on whose behalf the notice was given may –

(a) proceed with and take the examination of the witness or witnesses *ex parte* or adjourn the examination; and

(b) after an adjournment of the examination, continue it without giving notice.

7. If a witness produces a document and, for good reason to be stated in the deposition, refuses to part with the original of it, then a copy of it or extract from it, certified by each commissioner present to be true and correct, is to be annexed to the deposition of the witness.

8. Each witness to be examined under the commission is to first take the witness's oath in the form set out below or make an affirmation or promise to similar effect in accordance with the law of the place where the examination is conducted.

9. If a witness does not understand the English language –

(a) any interrogatories and cross-interrogatories are to be translated into a language with which the witness is conversant before the examination; and

(b) the examination is to be taken in English through the medium of an interpreter to be appointed.

10. An interpreter acting for the purposes of paragraph 9 is to take an interpreter's oath in the form set out below or make an affirmation or promise to similar effect in accordance with the law of the place where the examination is conducted.

11. A deposition is to be signed by the witness and by each commissioner who took it.

12. Any interrogatories and cross-interrogatories, the depositions and any documents referred to in them, or certified copies of them or extracts from them, are to be sent to the Registrar on or before [*specify date*] or such further date as may be ordered, enclosed in a cover under the seal of each commissioner.

13. Before a commissioner acts in accordance with this commission that commissioner must take the commissioner's oath in the form set out below or make an affirmation or promise to similar effect in accordance with the law of the place where the examination is conducted.

14. Each commissioner has authority to administer such oath, affirmation or promise to the other or others of them and each other oath, affirmation or promise provided for by this commission.

15. In the absence of any other commissioner a commissioner may himself take the oath or make the affirmation or promise.

Dated

[*Seal of the Court and signature of Registrar*]

OATH BY WITNESS

You swear that you will answer all such questions asked of you, without favour or affection to either party, and that your answers will be the truth, the whole truth and nothing but the truth. So help you God. (Witness) I swear.

OATH BY COMMISSIONER

You swear that you will, according to the best of your skill and knowledge, truly and faithfully, and without partiality to any party in this proceeding, take the examinations and depositions of each witness produced and examined by virtue of the commission. So help you God. (Commissioner) I swear.

OATH BY INTERPRETER

You swear that you will truly and faithfully, and without partiality to any party in this proceeding, and to the best of your ability, interpret and translate the oath or oaths, affirmation or affirmations, which are to be administered, and all the questions exhibited or put to each witness produced before and examined by the commissioners, as far as you are directed and employed by the commissioners, to interpret and translate the same out of the English language into the language of such witness or witnesses, and to interpret and translate the depositions taken and made to such questions out of the language of such witness or witnesses into the English language. So help you God. (Interpreter) I swear.

OATH BY CLERK

You swear that you will truly, faithfully and without partiality to any party in this proceeding, take, write down, transcribe and engross each question which is to be exhibited or put to each witness, and also the depositions of each witness produced before and examined by the commissioners, as far as you are directed and employed by the commissioners to take, write down, transcribe or engross the questions and depositions. So help you God. (Clerk) I swear.

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(*NOTE - A commission to one commissioner or to two or more alternative commissioners can be framed on the above form, but in that case the commission will authorise the commissioner who executes the commission to administer the commissioner’s oath to himself.*)