

LEVEL

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TWENTY  
SEVEN

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C H A M B E R S



**Commissions of Inquiries and Inquests – perspectives  
from the bench and each side of the Bar Table**

**Special guest: John Byrne AO RFD**

**Level Twenty Seven Chambers barristers: Nicholas Andreatidis QC, Matthew Hickey,  
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## >> A COI is on the horizon – what's next?

> Inquisitorial vs Adversarial

> Each commission is different

- Consider precise language of mandate/terms of reference
- What is slated length of duration - 4 years or 4 months?

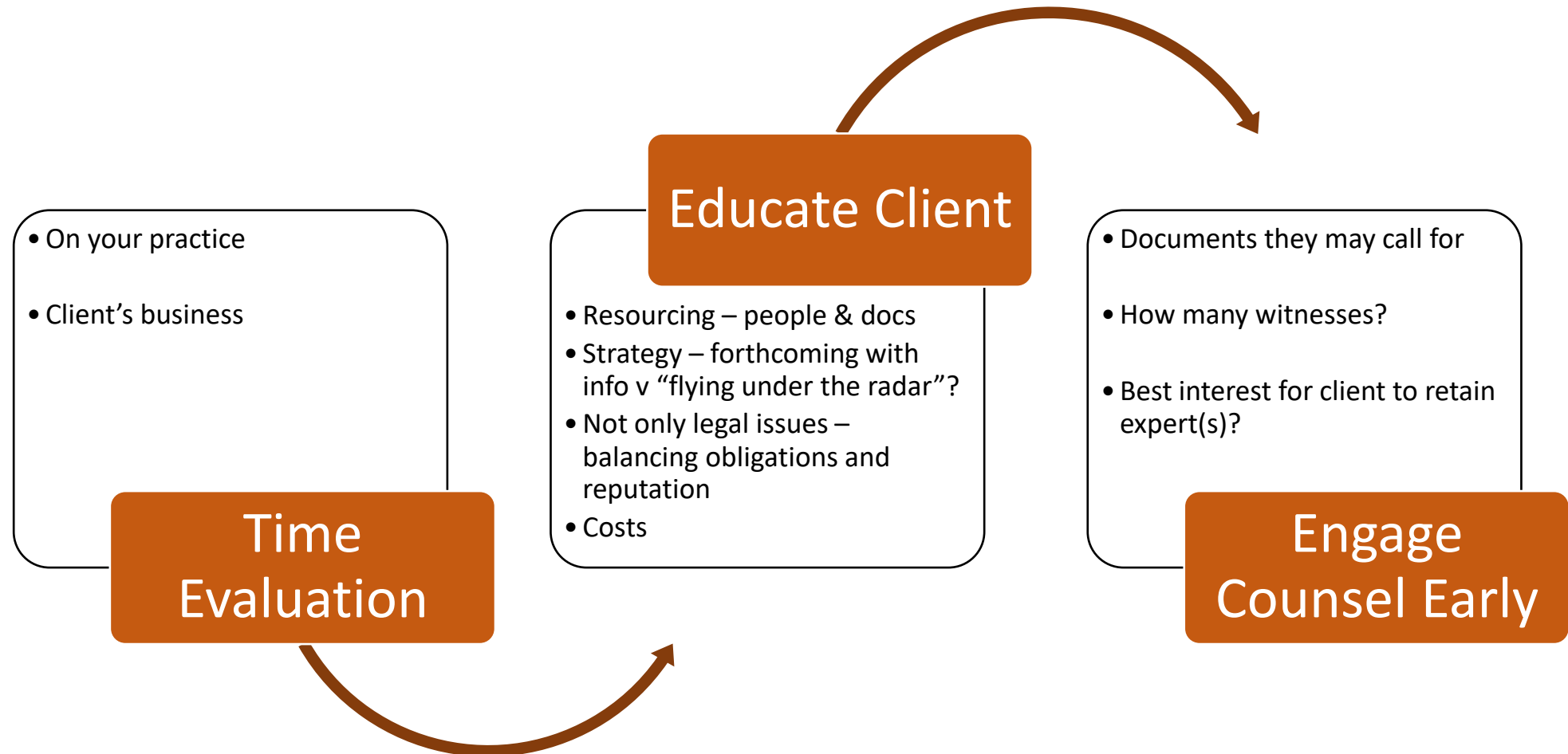
## >> **Difference between a commission and a trial**

- > Breadth of Commission's legislative powers
- > Application of rules of evidence
- > Navigating legal professional privilege and requests to produce commercially sensitive/confidential material
- > Issues of procedural fairness

## >> “Tooling up” the commission team

- > Resourcing – Cth inquiries often better resourced than State
- > Legally trained commissioner/expert commissioner/both?
- > Role of counsel assisting team
- > “Casting the net” for documents/witnesses
- > What expectations does the commission team have of the parties?

# >> “Tooling up” lawyers representing the parties



## >> The Process - seeking leave

> Leave required

> Open vs Not

- Written, Oral or Both?
- Tone & technology

> Will leave be given?

- Differences between commission v inquiry

## >> The Process - practical considerations

### Be Familiar With

Practice Directions

Document Management System

### Witnesses

Managing the human

Preparing statements

### Atmosphere

Subject Matter

Relations Between Counsel Appearing & Counsel Team Assisting



## >> **The Process - relationship between counsel assisting and parties**

> Benefit for client by way of productive discussion with counsel assisting

- Scope of notices to produce
- Document management
- Order of witnesses

> From Commission team's point of view

- Avoid interlocutory skirmishes which may impact timetable
- May obtain by consensus something that would otherwise be inadmissible

## >> The Process - witnesses

### > “Your” witnesses

- Preparation – detail of statements
- Weight given to evidence – lead vs not to lead
- Calling own witness?

### > Witness of other party

- Fairness – Put things to witnesses, *Browne v Dunn*

## >> The Process - expert evidence

- > Expert evidence – in client’s best interests?
  - Costs borne by the party
  - Scope for negotiating commission to pay some costs?
- > Get a report
  - Compliance with UCPR/ Fed Court expert rules?
- > Seeking to have expert called and report tendered
- > Concurrent evidence
  - Trial vs Commission
  - Multiple non-experts giving concurrent evidence
- > What is genuinely in issue

## >> Conclusion

Not a lot lawyers can do to protect client from broad coercive powers

“Tool up” early to mitigate pressure

Foster co-operative relationship with counsel assisting

Rules of evidence do not strictly apply BUT deploy it to maximise the weight given

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