

Arlen Hill Hospital's Inquiry – Standard of Proof

Direction 1 – Standard of Proof

In terms of section 17 of the Inquiries Act 2005 (“the Act”), Ms Shaw (“the Chair”) of the Arlen Hill Hospital's Inquiry (“the Inquiry”) directs that, in general, the standard of proof that will be adopted when considering evidence with a view to making a factual determination will be the civil standard of balance of probabilities. However, this is without prejudice to the Chairperson expressing a conclusion specifically by reference to a different standard of certainty.

Ms Shaw, Chair of the Arlen Hill Hospital's Inquiry

Note

Section 17(1) of the Act (headed “Evidence and procedure”) provides that, subject to any provision of the Act or the applicable Inquiry Rules, the procedure and conduct of the Inquiry are to be such as the Chairperson may direct. Section 17(3) of the Act requires that in making any decision as to the procedure or conduct of an Inquiry, the Chairperson must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds, to witnesses, or to others).

The Remit and Terms of Reference of the Inquiry require the Chairperson to determine specified matters. In terms of section 24 of the Act, the Chairperson is required to deliver a report setting out the facts determined by the Inquiry. Neither the Act nor the applicable Rules specify what standard of proof is to be applied in making such findings. Section 2 of the Act provides that an inquiry is not to rule on and has no power to determine any person's civil or criminal liability. Accordingly, neither the civil standard of proof (on the balance of probabilities) nor the criminal standard (beyond reasonable doubt) is necessarily mandated by statute. The Inquiry is an investigative or inquisitorial process and, strictly, the question of onus of proof therefore does not arise.

Nevertheless, in the interests of fairness, and with a view to achieving both consistency and certainty, the Chairperson considers that it is appropriate to make clear to core participants and other interested parties what approach to fact-finding will be adopted. This clarification aims to assist parties when making submissions on the effect of evidence and to provide additional clarity to those who will review the final report.