



## INFORMATION FOR WITNESSES

### A GUIDE FOR WITNESSES AND THEIR LAWYERS INVOLVED IN COMMISSION HEARINGS

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## ABOUT THE INTEGRITY COMMISSION

The role of the Integrity Commission ('**Commission**') is outlined in the *Integrity Commission Act 2018* and the *Public Interest Disclosure Act 2012*.

The Commission receives and assesses reports regarding wrongdoing in the ACT public sector. The Commission's task is to decide whether a report of wrongdoing involves corruption, maladministration or conduct that poses a substantial and specific danger to public health or safety, or the environment. If the Commission decides that the report could involve this type of conduct, it may investigate the information or refer the report to another agency for investigation. The Commission will review investigations performed by other agencies and monitor how reports are dealt with to ensure just outcomes.

The Commission is able to investigate wrongdoing on its own initiative even in the absence of a report.

The Commission aims to:

- foster a proactive culture of reporting wrongdoing and review the way in which public sector entities investigate and deal with reports of wrongdoing;
- investigate, or deal with, alleged wrongdoing in the ACT public sector;
- refer suspected instances of criminality or wrongdoing to the appropriate authorities;
- prevent wrongdoing through research and mitigation efforts;
- ensure people who report wrongdoing are protected and treated respectfully;
- publish information about its investigations including what lessons may have been learned during an investigation;
- provide education programs and training programs; and,
- foster public confidence in the ACT Legislative Assembly and ACT public sector.

The Commission is an investigative agency. It is not a court or disciplinary tribunal. While the Commission can make a report setting out statements as to any of its findings, opinions and recommendations (including a finding that a person has engaged in corrupt conduct), it is prohibited from making any finding that a person has committed, is committing or is about to commit a criminal offence or disciplinary offence (unless, in the latter instance, it is serious or systemic corrupt conduct).

For the purposes of an investigation, the Commission may summons a witness to give evidence in public (a public inquiry) or in private (a compulsory examination).

## ABOUT YOUR SUMMONS

The Commission may summon a person to appear for compulsory examination, whether in private or public session and/or produce documents or other things.

Your summons sets out the date and time when you must attend for examination and/or produce documents or other things. The accompanying letter has informed you of various procedural matters, including whether your examination will be conducted privately or publicly.



**You must do everything your summons asks you to do. You may be committing an offence under the Integrity Commission Act if you do not do what is required or could be arrested for failing to attend.**

Your summons will set out in general terms the nature of the allegation or complaint being investigated if the Commission considers it would not prejudice the investigation to do so.

It is an offence to disclose information about a summons that is likely to prejudice the investigation to which it relates, in circumstances where the accompanying confidentiality notice specifies that information about the summons must not be disclosed. However, disclosure is permitted in accordance with exceptions specified in the notice, usually where disclosure is made:

- a) to an employee, agent or other person in order to obtain information to comply with the summons and the employee, agent or other person is directed not to inform the person to whom the information relates about the matter, or
- b) to obtain legal advice or representation in relation to the summons, or
- c) for the purposes of, or in the course of, legal proceedings, or
- d) to a registered medical practitioner or registered psychologist in relation to the provision by that health practitioner of medical or psychiatric care, treatment or counselling (including but not limited to psychological counselling) to a person required to give evidence.

If you have any questions about the summons, what information about it can be disclosed or attending to give evidence, please contact the Commission officer named in the summons, or your lawyer.

## **LEGAL REPRESENTATION**

You are entitled to seek legal advice. If you are a current or former member of the ACT APS, please contact [email] who will assist you in relation to advice and representation.

On some occasions, the Commission may refuse to allow a particular lawyer to appear, where to do so may prejudice the investigation or give rise to a conflict of interest.

A lawyer who is authorised to appear may, with the leave of the presiding Commissioner, examine or cross-examine any witness on any matter the Commission considers relevant.

More information on authorisation to appear and legal representation at public inquiries is contained in the attached Standard Directions for Public Inquiries.

## **PRE-HEARING PROVISION OF DOCUMENTS**

The Commission does not usually make available to a witness documents proposed to be put to the witness in a compulsory examination prior to that compulsory examination.

## **WITNESS WELFARE**

The Commission takes seriously the need to identify and manage risks to the health and safety of those involved in its investigations and to protect witnesses against any potential harm, intimidation or harassment.



If you are unwell or under any physical or mental impediment that may affect your involvement in the Commission's investigation or believe any physical or mental condition may be worsened by your involvement in the Commission's investigation, you should inform the Commission as soon as possible so that the Commission can assess and manage any risk to your health and safety.

If you are required to attend a compulsory examination and consider that you are unfit to attend and give evidence, you should advise the Commission officer named in your summons as soon as possible. The Commission may require you to provide a report from a suitably qualified medical practitioner setting out your current condition and how that impacts on your ability to attend and give evidence. **You must nevertheless attend the Commission in response to the summons unless released from doing so by the presiding Commissioner.**

The danger of physical risk to those attending hearings is minimised through:

- limiting and controlling access to public and private areas of the Commission;
- electronic screening of persons wishing to enter the hearing room;
- electronic monitoring of the hearing room;
- not permitting glassware to be used in the hearing room; and
- provision for response to a critical incident (which includes an incident involving imminent or actual serious injury to a person).

Where a potential risk to the health and safety of any person required to attend at a compulsory examination or public inquiry is identified, the Commission may:

- regulate the hearing so as to reduce the risk;
- adjourn the hearing where appropriate;
- obtain a medical report from a suitably qualified medical practitioner;
- take evidence from a suitably qualified medical practitioner;
- make suppression orders under ;
- make arrangements to protect the safety of any person (see below);
- arrange for a Commission first aid officer to be present;
- appoint a Commission contact officer to liaise with the person.

The Employee Assistance Program ("EAP") is available to persons who are, or were, ACT public sector employee whose health and safety may be at risk arising from a Commission investigation.

If you are employed in the private sector or unemployed, please see the Commission's website for a list of free support services.

If appropriate, you can also contact:

- Lifeline on 13 11 14
- Suicide Call Back Service 1300659 467
- Mental Health Line 1800 011 511
- Beyond Blue 1300 224 636
- Headspace (for people aged 12-25) 1800 650 890.

If your safety (or the safety of any other person, including family members) may be endangered or there is a risk of intimidation or harassment because you or another person assisted the Commission, the Commission can make contact with the local police on your behalf to put a priority notice on your work or residential address.



## **GIVING EVIDENCE AND PRODUCING DOCUMENTS AND OTHER THINGS**

Commission hearings are inquisitorial rather than adversarial. This means that they are conducted to discover what happened. It is not a contest like a trial between parties trying to prove or disprove a 'case'. The Commission is not bound by the rules of evidence and can inform itself on any matter in such manner as it considers appropriate.

All hearings are conducted and presided over by the Commissioner or an Assistant Commissioner. In each case, the person presiding should be addressed as "Commissioner."

You will be asked to give an oath or affirmation prior to giving your evidence. An oath concludes with the phrase "so help me god" while an affirmation does not reference religion.

As a witness, you will be asked questions by Counsel Assisting the Commission. In the case of a public inquiry, you may be asked questions by lawyers appearing for others involved in the investigation. If you have a lawyer assisting you, they will generally have an opportunity to ask you questions.

A witness is not excused from answering any question or producing any document or other thing on because it might incriminate him or her, or on the ground of a duty of secrecy or other restriction on disclosure, except for parliamentary privilege or public interest immunity.

However, where an answer to a question would disclose, or the document or other thing contains, a privileged communication between a lawyer (in his or her capacity as a lawyer) and a person for the purpose of providing or receiving legal professional services generally or in relation to the appearance, or reasonably anticipated appearance, at a compulsory examination, objection can be taken on the ground of legal privilege and determined by the Supreme Court.

When giving evidence, you should:

- listen carefully to the question,
- ask for a question to be repeated if you did not hear or understand it,
- answer each question truthfully and to the best of your recollection,
- say if you do not know the answer to the question,
- speak clearly so that your evidence can be understood,
- answer rather than nod so your answer can be recorded.

## **WHAT YOU CAN EXPECT AT A COMPULSORY EXAMINATION**

Evidence given in a private examination is confidential and cannot be disclosed except by direction of the Commissioner.

Compulsory examinations are generally subject to confidentiality notices. This means that you (and your lawyer) cannot talk to others about the compulsory examination, your evidence, or the fact that a compulsory examination has occurred. The terms of the direction allow you to talk with your lawyer(s). In addition, it will not be a contravention of a direction to:

- a) provide information by way of complaint to the ACTIC Inspector, or
- b) publish any evidence, contents of a document or information to a registered medical practitioner or registered psychologist for the purposes of that health practitioner providing



medical or psychiatric care, treatment or counselling (including but not limited to psychological counselling) to you.

A direction can be lifted or varied by the Commission where it is necessary or desirable to do so in the public interest. You may apply to the Commission at any time to have a direction lifted or varied on public interest grounds.

At the commencement of the compulsory examination the presiding Commissioner will:

- announce that the hearing is being conducted as a compulsory examination,
- make a direction as to who may be present,
- if appropriate, set out the nature of the allegation or complaint being investigated,
- invite appearances by lawyers,
- swear or affirm you,
- where you are legally represented, ask your lawyer if they have explained to you your rights and obligations.
- where you are not legally represented the Commissioner will provide a short explanation of these matters to you.

Counsel Assisting the Commission then commences questioning.

At the end of questioning by Counsel Assisting, you may be asked questions by your lawyer if the presiding Commissioner considers it is appropriate to do so.

The evidence you give at a compulsory examination will be electronically recorded and a written transcript made from the recording.

## **WHAT YOU CAN EXPECT AT A PUBLIC INQUIRY**

On the first day of a public examination the presiding Commissioner will:

- announce that the examination is being conducted in public,
- if appropriate, set out the nature of the allegation or complaint being investigated and the scope and purpose of the investigation,
- invite Counsel Assisting to make an opening address,
- invite appearances by legal representatives.

When you are first called to give evidence, the presiding Commissioner will:

- swear or affirm you,
- where you are legally represented, ask your lawyer if they have explained to you your rights and obligations under the ACTIC Act,
- where you are not legally represented or your lawyer has not explained your rights and obligations under the ACTIC Act, provide a short explanation of these to you.

Counsel Assisting the Commission then commences questioning you.

At the end of questioning by Counsel Assisting, the presiding Commissioner may give leave to others to cross-examine you. You may then be asked questions by your lawyer. The presiding Commissioner may then give leave to Counsel Assisting to ask you further questions to clarify any aspect of your evidence.



The evidence you give at in public examination will be electronically recorded and a written transcript made from the recording. The Commission may publicly live stream its public inquiries via the internet so that external internet users (members of the public and others) can view the hearing remotely.

If you have concerns about your public inquiry evidence being live streamed, you may make a written representation to the Commission, however, the discretion remains with the Commission as to whether or not any exemptions to live streaming will apply.

The Commissioner may adjust the form of the hearing, where this is necessary or desirable, to prevent streaming of the video (as distinct from the audio) recording of a witness' evidence and can direct the use of a pseudonym and/make a suppression order to preserve the privacy of a witness. If you feel that these arrangements should be applied to you, you should, either personally or through your lawyer, make an application for the directions you seek.

## **CONTEMPT**

The circumstances in which a person may be in contempt of the Commission are set out in Division 3.6.3 of the ACTIC Act. These include:

- failure to attend as a witness in obedience to a summons,
- failure to produce any document or other thing required by a summons,
- refusing to be sworn or make an affirmation,
- failing to answer a question put by the presiding Commissioner,
- willfully threatening or insulting a Commissioner, Assistant Commissioner, officer of the Commission, Counsel Assisting or other legal practitioner authorised to appear before the Commission,
- misbehavior before the Commission, and
- interrupting or obstructing any proceedings before the Commission.

The Supreme Court has jurisdiction to deal with any contempt where the Commissioner has presented to the Supreme Court a contempt of the Commission certificate.

Neither liability to be punished for contempt nor punishment for contempt excuses an offender from attending the Commission in obedience to a summons. The Commissioner may enforce attendance by way of arrest warrant.

## **SUBMISSIONS**

The making and consideration of submissions is one way in which the Commission affords procedural fairness.

At the conclusion of a public inquiry, Counsel Assisting will usually make submissions on what findings and recommendations are available to be made on the evidence before the Commissioner. These submissions are provided to relevant parties and the Commissioner will invite submissions in response from those parties. This gives them the opportunity of identifying potential findings and recommendations affecting them and to make submissions about them. . On occasion, Counsel Assisting may be asked to make further submissions in relation to any issues arising from the submissions in response.



The Commissioner may decide to make a public report based on evidence given in private examinations without proceeding to a public hearing. In these circumstances, Counsel Assisting will also make submissions on what findings and recommendations are available to be made by the Commission on the evidence and these will be provided to relevant parties, who will be given an opportunity to respond.

The Commissioner takes into account all submissions before making any findings or recommendations in his report.

## **REPORTS**

At the conclusion of an investigation, the Commission prepares reports which are provided to Parliament and made public by the Legislative Assembly.

The Commission is authorised to include in such a report:

- a) statements as to any of findings, opinions and recommendations, and
- b) statements as to the reasons for any of its findings, opinions and recommendations.

A proposed reports is provided to the persons to whom it relates to give them an opportunity to comment. The Commissioner will take those comments into account in finalizing the report for tabling in the Assembly. Once a report is made public it is published on the Commission's website. If you provided evidence in a matter that is the subject of a report, arrangements will be made to notify you of the likely date the report will be made public.

## **WITNESS EXPENSES**

### **Legal Assistance**

If you are a current, or former, member of the ACT APS, the Government Solicitor will assist you in securing legal representation. Please contact [ACTGSLegalAssistanceCoordination@act.gov.au](mailto:ACTGSLegalAssistanceCoordination@act.gov.au) to discuss legal representation.

If you are not, nor have you been, a member of the ACT APS, please contact the Commission prior to engaging with a legal representative, should you wish consideration be given to having those expenses reimbursed.

### **Fares**

The Commission will arrange for your travel and pay for the reasonable transport costs in getting to and from its premises on days that you are required to give evidence. This includes an allowance for kilometers travelled if your own vehicle is used. Please contact the officer named on your summons to discuss these arrangements.

### **Meals & Accommodation**

If you are prevented from having a meal at home, or making your normal arrangements, due to your appearance at the Commission, you may be entitled to reimbursement for that meal. Please speak to the commission officer named on your summons if you think you will be impacted in this way.





The Commission will arrange accommodation (including breakfast and, if appropriate, an evening meal) for country or interstate witnesses if an overnight stay is necessary. If you choose to make other arrangements, reimbursement will not exceed normal accommodation costs and will be subject to the presentation of receipts.

## **THE ACTIC INSPECTOR**

The Inspector is an independent statutory officer whose role is to oversee the operations and conduct of the Commission so as to ensure that it complies with the law and does not abuse the considerable powers which Parliament has vested in it.

The role of the Inspector is set out in Part 5 of the ACTIC Act.

The functions of the inspector are:

- (a) to assess and report on the commission's compliance with this Act and any memorandums of understanding or agreements entered into under this Act; and
- (b) to receive, investigate and assess complaints about the commission and members of staff of the commission; and
- (c) to make recommendations to the commission or public bodies about practices or procedures in relation to the performance of functions under this Act; and
- (d) any other functions given to the inspector under this Act or another territory law.

The ACTIC Inspector has extensive powers under the Act, including the power to investigate any aspect of the Commission's operations or any conduct of Commission officers.

If you consider that the Commission or a Commission officer has engaged in any abuse of power, impropriety or other forms of misconduct or maladministration, you may make a complaint to the ACTIC Inspector.

The Inspector's contact details are:

**General Phone:** (02) 5117 3650. The phone service operates from 10:00am to 4:00pm Australian Eastern Daylight Time (AEDT) Monday to Friday.

**Indigenous Line:** 1800 060 789

**International:** +61 2 5117 3650

**Post:** Inspector of the ACTIC, GPO Box 442, Canberra ACT 2601

**Office Location:** Level 5, 14 Childers Street, Canberra.