



I·C·A·C

INDEPENDENT COMMISSION
AGAINST CORRUPTION

NEW SOUTH WALES

**INFORMATION
FOR WITNESSES**

JANUARY 2025

INFORMATION FOR WITNESSES

A GUIDE FOR WITNESSES AND THEIR LAWYERS INVOLVED IN COMMISSION HEARINGS

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ABOUT THE INDEPENDENT COMMISSION AGAINST CORRUPTION

The NSW Independent Commission Against Corruption (“the Commission”) was established in 1989.

Under the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”) the Commission is tasked with investigating, exposing and preventing corrupt conduct (as defined in s 7, s 8 and s 9 of the ICAC Act) involving or affecting NSW public authorities and public officials.

Under s 13(2) of the ICAC Act, the Commission is to conduct its investigations with a view to determining:

- a) whether any corrupt conduct, conduct liable to allow, encourage or cause the occurrence of corrupt conduct or conduct connected with corrupt conduct, has occurred, is occurring or is about to occur, and
- b) whether any laws governing any public authority or public official need to be changed for the purpose of reducing the likelihood of the occurrence of corrupt conduct, and
- c) whether any methods of work, practices or procedures of any public authority or public official did or could allow, encourage or cause the occurrence of corrupt conduct.

The Commission can also investigate certain matters referred to it by the NSW Electoral Commission.

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.

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 and/or produce documents or other things at a compulsory examination or public inquiry (s 35 ICAC Act).

Your summons sets out the date and time when you must attend and whether you are required to give evidence in a public inquiry or a compulsory examination and/or produce documents or other things.

You must do everything your summons asks you to do. You may be committing an offence under the ICAC Act if you do not do what is required (s 86 ICAC Act) or could be arrested for failing to attend (s 36 ICAC Act).

If your summons is for a compulsory examination, it may set out the nature of the allegation or complaint being investigated if the Commission considers it would not prejudice the investigation to do so. In any event, you are entitled to be informed of the nature of the allegation or complaint being investigated no later than the commencement of the compulsory examination. Therefore, if that information is not contained in the summons, you will be informed of the allegation or complaint being investigated at the commencement of the compulsory examination.

If your summons is for a public inquiry, it will set out the nature of the allegation or complaint being investigated and the general scope and purpose of the public inquiry.

It is an offence under s 114 of the ICAC Act to disclose information about a summons that is likely to prejudice the investigation to which it relates, in circumstances where the summons specifies that information about the summons must not be disclosed. However, that section is not contravened if the 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.

Further information for those involved in Commission investigations can be found at the Commission's website: www.icac.nsw.gov.au.

LEGAL REPRESENTATION

The Commission is required to give a reasonable opportunity for a person giving evidence to be legally represented (s 33(2) ICAC Act).

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*.

You may be able to obtain free legal advice and representation from the Legal Branch of the **Department of Communities and Justice**. Contact details are:

Phone: (02) 8688 0111

Address: Level 4 South, 93 George Street Parramatta NSW 2150

Email: iir.legal@justice.nsw.gov.au

More details are at: www.lro.justice.nsw.gov.au/legal-representation/contact-us.

PRE-HEARING PROVISION OF DOCUMENTS

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

Prior to the commencement of a public inquiry, the Commission may provide relevant persons with confidential access to selected documents through its restricted website.

Application for access to the restricted website for a public inquiry can be made on the attached form.

WITNESS WELFARE AND PROTECTION

The Commission takes seriously the need to identify and manage risks to the wellbeing and safety of those involved in its investigations and to protect witnesses against emotional turmoil, intimidation or harassment.

Witness wellbeing

If you are under any mental or physical impediment that may affect your involvement in the Commission's investigation or believe any physical or mental condition may be exacerbated 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 wellbeing.

The Commission has a witness liaison officer. The role of the witness liaison officer is to interact with and assess witnesses regarding their wellbeing and provide them with referrals to external support services and resources.

The witness liaison officer does not discuss evidence, give legal advice or provide ongoing counselling.

For further information about witness liaison and support, please call the witness liaison officer on (02) 8281 5999 or email witnessliaison@icac.nsw.gov.au.

If you are a NSW public sector employee, then you may be able to seek confidential counselling through your agency's employee assistance program (EAP).

If you are employed in the private sector or unemployed, you may visit the NSW Mental Health Commission website at: www.nswmentalhealthcommission.com.au.

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 you are required to attend a compulsory examination or public inquiry 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.**

Witness protection

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

- having special constables on duty to maintain security,
- not allowing banned persons entry to the Commission's offices or hearing rooms,
- 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,

- making 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 wellbeing 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 s112 of the ICAC Act (see below),
- 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,
- arrange for an appropriately qualified medical practitioner or counsellor to be present.

It is a criminal offence under s 92 of the ICAC Act for a person to wilfully prevent or wilfully endeavour to prevent a person summoned to attend as a witness from attending as a witness or producing anything in evidence pursuant to the summons.

Section 79S of the ICAC Act provides that, if it appears that, because a person is a “protected person”, the safety of the person or another person may be prejudiced, or the person may be subject to intimidation or harassment, the Commission may make arrangements to:

- protect the person’s safety; or
- protect the person from intimidation or harassment.

Such arrangements may involve directing the Commissioner of Police or a public authority or public official prescribed by the regulations to:

- provide protection,
- provide personnel or facilities or both to assist in providing protection, or
- otherwise assist in providing protection.

A “protected person” is a person who takes “protected action” (as defined in s 79D(1) of the ICAC Act), being:

- making a complaint or disclosure of information about a matter that concerns or may concern corrupt conduct or another matter the Commission may deal with under the ICAC Act,
- making a report under s 11 of the ICAC Act,
- complying with a requirement under s 21 or s 22 of the ICAC Act,
- giving evidence or producing a document or other thing in a hearing (or being about to do so), or
- assisting the Commission in some other way.

Section 79T of the ICAC Act provides that a person summoned to attend or appearing before the Commission as a witness, or producing a document or other thing to the Commission, has the same protection as a witness in proceedings in the Supreme Court of NSW.

It is an offence under s 79I of the ICAC Act for any person to take detrimental action against another person if:

- (a) the person suspects, believes or is aware, when taking the detrimental action, that the other person or a third person is a “protected person”, and
- (b) the suspicion, belief or awareness is a contributing factor to the taking of the detrimental action.

Under s 79J of the ICAC Act, a person who takes detrimental action may also be liable in damages.

The Commission may also make an order applying to a specified person for the purposes of protecting the safety of another person or protecting another person from intimidation or harassment (s 79S((2)(b))). It is a criminal offence for anyone to contravene such an order.

If you have any concerns about any of these matters, you should contact the Commission as soon as possible.

WITNESS CO-OPERATION POLICY

A person can co-operate with the Commission by:

- fully reporting any corrupt conduct at the earliest possible time,
- honestly and completely disclosing all relevant information,
- providing voluntary assistance during an investigation, including by providing evidence and/or other information in relation to the subject matter of an investigation, including at a compulsory examination or a public inquiry,
- giving evidence in the criminal prosecution of others arising from the investigation.

Merely fulfilling certain legal obligations under the ICAC Act, such as producing documents in response to a notice or summons issued by the Commission or attending to give evidence in response to a summons (unless the evidence is comprehensive and entirely truthful), does not constitute co-operation for the purposes of the policy.

There are various potential benefits available to those who fully co-operate with the Commission.

1. Acknowledgement of assistance in a Commission report

The Commission may prepare a report in relation to any matter that has been the subject of an investigation. Such reports are published on the Commission's website.

Where appropriate and subject to the consent of the relevant person(s), the Commission will note in its report the co-operation provided by particular persons and the value of that co-operation in uncovering corruption.

2. Discretion not to make corruption findings

In reporting on its investigations, the Commission may make factual findings and findings that a person has engaged in corrupt conduct.

The Commission may exercise a discretion not to make a finding of corrupt conduct (s 13(2A) ICAC Act) even though the factual findings would permit it to do so. The discretion may be exercised where a person has fully co-operated with the Commission. Relevant considerations include:

- the value to the Commission of the assistance, including the value of any evidence or other information provided by the person,
- the stage of the investigation the person began to fully co-operate,
- the extent and level of their involvement in the relevant corruption,
- whether they were an instigator or beneficiary of the corrupt conduct,
- whether the making of such a finding would be, in all the circumstances, unduly severe.

3. Discretion not to recommend consideration of prosecution

In reporting on its investigations, the Commission may make a statement as to whether consideration should be given to:

- obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of a person for a specified criminal offence,
- taking action against a person for a specified disciplinary offence,
- taking action against a person as a public official on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

Where a person has fully co-operated with the Commission, the Commission may also exercise its discretion to not recommend consideration be given to seeking the advice of the DPP or the taking of disciplinary or dismissal action against that person. The discretion may be exercised where a person has fully co-operated with the Commission. Relevant considerations include:

- the value to the Commission of the assistance, including the value of any evidence or other information provided by the person,
- the stage of the investigation the person began to fully co-operate,
- the extent and level of their involvement in the relevant corruption,
- whether they were an instigator or beneficiary of the corrupt conduct,
- whether the making of such a statement would be, in all the circumstances, unduly severe.

Where a person, who has given false or misleading evidence to the Commission, voluntarily returns to the Commission and co-operates by providing a full and truthful account, the Commission will take that co-operation into account when deciding whether consideration should be given to obtaining the advice of the DPP with respect to a prosecution for an offence under s 87 of the ICAC Act of giving false or misleading evidence. In exercising this discretion, the Commission will take into account:

- whether the person has on their own volition approached the Commission to change their evidence,
- whether the person has provided a full and truthful account,
- the stage of investigation at which the person approached the Commission to change their evidence,
- whether the change is likely to materially affect the progress and outcome of the investigation.

Although the Commission may exercise its discretion not to recommend consideration of prosecution, the DPP retains statutory functions with respect to instituting and carrying on criminal proceedings that are independent from a referral for advice from the Commission. Ultimately, it is a matter for the DPP to determine whether a person should be prosecuted, and the Commission's decision is not binding on the DPP.

4. Indemnities and undertakings

Under s 49 of the ICAC Act, the Commission may recommend to the NSW Attorney General that a person be granted an indemnity from prosecution for a specified offence or in respect of specified acts or omissions. If such an indemnity is granted, no proceedings may thereafter be instituted or continued against the person in respect of the offence or the acts or omissions.

The Commission may also recommend to the Attorney General that a person be given an undertaking that an answer, statement or disclosure in proceedings before the Commission, or the fact of a disclosure or production of a document in proceedings before the Commission, will not be used in evidence against the person. If such an undertaking is given, the answer, statement, disclosure or the fact of the disclosure or production is not admissible in evidence against the person in any civil or criminal proceedings, other than proceedings in respect of the falsity of evidence given by the person.

5. Assistance to a person convicted of an offence

Where a person who has co-operated with the Commission is subsequently convicted of an offence arising from the Commission investigation, the Commission can provide a letter to the relevant court setting out details of the co-operation and request that the court take that co-operation into account when imposing the sentence.

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 an adversarial contest between parties trying to prove or disprove a “case”. Hearings are conducted with as little emphasis on an adversarial approach as is possible (s 17(2) ICAC Act).

The Commission is not bound by the rules of evidence and can inform itself on any matter in such manner as it considers appropriate (s 17(1) ICAC Act).

All hearings are conducted and presided over by the Chief Commissioner, a Commissioner or an Assistant Commissioner.

In each case, the person presiding should be addressed as “Commissioner”.

You can give your evidence on oath or affirmation.

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. Your lawyer will generally have an opportunity to ask you questions.

If you believe that answering any question or producing any document or other thing may be incriminating, you may object. If you object to answering a question or producing a document, you must still answer the question or produce the document. However, the evidence cannot then be used against you in any subsequent criminal or civil proceedings, except in relation to prosecutions for offences under the ICAC Act, such as giving false evidence (s 37 ICAC Act). Evidence given by a public official may be used in disciplinary proceedings against that public official where the Commission has made a finding in a report under s 74 of the ICAC Act that the public official has engaged, or has attempted to engage, in serious corrupt conduct (s 114A(5) ICAC Act).

If you are not sure whether you should object, you should speak with your lawyer. If you do not have a lawyer representing or advising you, then the presiding Commissioner will explain to you your right to object and the effect of such an objection.

Section 38 of the ICAC Act provides that the presiding Commissioner may declare that all or any classes of answers given by a witness, or that all or any classes of documents or other things produced by a witness, will be regarded as having been given or produced on objection by the witness and there is accordingly no need for the witness to make an objection in respect of each such answer, document or other thing. Such a declaration is known as a s 38 declaration and will usually be made by the presiding Commissioner on request of the witness or their lawyer.

Section 37 of the ICAC Act provides that a witness is not entitled to refuse:

- to be sworn or to make an affirmation,
- to answer any question relevant to an investigation put to the witness by the presiding Commissioner, or

- to produce any document or other thing in the witness's custody or control which the witness is required by the summons or the presiding Commissioner to produce.

A witness is not excused from answering any question or producing any document or other thing on any ground of privilege, or on the ground of a duty of secrecy or other restriction on disclosure, or on any other ground (s 37(2) ICAC Act).

The only exception to this rule is where an answer to a question would disclose, or the document or other thing contains, a privileged communication between a lawyer (in their capacity as a lawyer) and a person for the purpose of providing or receiving legal professional services in relation to the appearance, or reasonably anticipated appearance, of a person at a compulsory examination or public inquiry (s 37(5) ICAC Act).

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 response can be recorded.

WHAT YOU CAN EXPECT AT A COMPULSORY EXAMINATION

Evidence given in a compulsory examination is private. This means that, apart from Commission officers who need to be present, only you and your lawyer(s) will be present and aware of the evidence that is given and/or any documents or other things produced.

Compulsory examinations are generally subject to a non-publication direction under s 112 of the ICAC Act. 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 ICAC Inspector (see below), 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 (s 112(3) ICAC Act).

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,
- make any non-publication direction under s 112 of the ICAC Act,
- 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 under the ICAC Act and, in particular, s 37 and s 38 of the ICAC Act (see above under "GIVING EVIDENCE AND PRODUCING DOCUMENTS AND OTHER THINGS"),

- where you are not legally represented or your lawyer has not explained your rights and obligations under the ICAC Act, provide a short explanation of these to you,
- generally, make a declaration under s 38 of the ICAC Act that all answers given by you and all documents or other things produced by you during the compulsory examination are to be regarded as having been given or produced on objection.

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.

WHAT YOU CAN EXPECT AT A PUBLIC INQUIRY

The Commission has issued *Standard Directions for Public Inquiries* and *Public Inquiry Procedural Guidelines* under s 31B of the ICAC Act relating to the conduct of public inquiries. Copies of these are attached.

The *Standard Directions for Public Inquiries* deal with the following matters:

- sitting times
- authorisation to appear and legal representation,
- conduct of the public inquiry – witnesses,
- conduct of the public inquiry – documents,
- section 112 directions,
- publication of and access to evidence,
- submissions,
- use of generative artificial intelligence,
- liaison with the Commission on conduct of the public inquiry.

The s 31B *Public Inquiry Procedural Guidelines* deal with the following matters:

- the investigation and consideration of evidence that might exculpate affected persons,
- the disclosure of exculpatory and other relevant evidence to affected persons,
- the opportunity to cross-examine witnesses as to their credibility,
- providing affected persons and other witnesses with access to relevant documents and a reasonable time to prepare before giving evidence,
- other considerations necessary to ensure procedural fairness.

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

- announce that the hearing is being conducted as a public inquiry,
- set out the nature of the allegation/s or complaint/s 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 ICAC Act,
- where you are not legally represented or your lawyer has not explained your rights and obligations under the ICAC Act, provide a short explanation of these to you,
- generally, make a declaration under s 38 of the ICAC Act that all answers given by you and all documents or other things produced by you during the public inquiry are to be regarded as having been given or produced on objection.

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.

RECORDING AND LIVE STREAMING YOUR EVIDENCE

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

The Commission does not usually provide a witness with a copy of the transcript of their compulsory examination evidence as it will be the subject of a s 112 direction.

Public inquiry transcript is published on the Commission's website: www.icac.nsw.gov.au.

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.

CONTEMPT

The circumstances in which a person may be in contempt of the Commission are set out in Part 10 of the ICAC 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,
- wilfully threatening or insulting a Commissioner, Assistant Commissioner, officer of the Commission, Counsel Assisting or other legal practitioner authorised to appear before the Commission,
- misbehaviour 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. A Commissioner may enforce attendance by way of arrest warrant (s 99(5) ICAC Act).

An act or omission may be punished as a contempt or an offence even though it could also be punished respectively as an offence or contempt, but if an act or omission constitutes both an

offence and a contempt of the Commission, the offender is not liable to be punished twice (s 101 ICAC Act).

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 makes submissions on what findings and recommendations are available to be made by the Commission on the evidence before the Commission. These are usually in writing and are subject to a non-publication direction under s 112 of the ICAC Act. These submissions are provided to relevant parties and the Commission invites submissions in response from those parties. This gives those parties the opportunity of identifying potential findings and recommendations affecting them and to address whether, in their view, the evidence supports or does not support such findings or recommendations. On occasion, Counsel Assisting may be asked to make further submissions in relation to any issues arising from the submissions in response.

Occasionally, the Commission may decide to make a public report based on evidence given in compulsory examinations without proceeding to a public inquiry. 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 Commission takes into account all submissions it receives before making any findings or recommendations in its reports.

COMMISSION REPORTS

After all public inquiries, and sometimes after compulsory examinations, the Commission prepares reports which are provided to Parliament and made public by the Presiding Officers of the Houses of Parliament (s 74 ICAC Act).

The Commission is authorised to include in such a report:

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

The report must include, in respect of each "affected" person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to:

- a) obtaining the advice of the DPP with respect to the prosecution of the person for a specified criminal offence,
- b) the taking of action against the person for a specified disciplinary offence,
- c) the taking of action against the person as a public official on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

An "affected" person is a person described as such in any reference made by both Houses of Parliament or against whom, in the Commission's opinion, substantial allegations have been made in the course of or in connection with the investigation concerned.

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

The Commission reimburses witnesses for reasonable expenses incurred in attending a compulsory examination or public inquiry (other than legal expenses). Claims should be sent to:

NSW ICAC
GPO Box 500
Sydney NSW 2001

Loss of income

For ordinary witnesses, the Commission will reimburse loss of income, salary or wages as follows:

- i. up to 4 hours loss of working time on that day, not exceeding \$50.05 per day
- ii. more than 4 hours loss of working time on that day, not exceeding \$100.80 per day.

Your employer should sign the certificate on the claim form.

In the case of experts required to give evidence, the Commission will reimburse as follows:

- i. for the first two hours or part thereof – \$108.05 per day
- ii. for each additional half-hour or part thereof – \$20.70 per half hour up to a maximum of \$204.60 per day.

Please complete the attached Form 1 "Claim for Witness Expenses".

Fares

The Commission will pay your reasonable transport costs in getting to and from its premises on days that you are required to give evidence. This includes an allowance for kilometres travelled if your own vehicle is used. The Commission will pay for travel by taxi in the inner metropolitan area but requires receipts for taxi fares claimed.

For country and interstate witnesses, the Commission will normally arrange for travel by air. This can be arranged for you by telephoning the Commission officer named in your summons.

Please complete Form 2 "Claim for Witness Travel Expenses".

Meals and accommodation

You are eligible to be reimbursed for reasonable costs of meals, including non-alcoholic beverages, if your appearance at the Commission, or related travel, prevent you from having the meal at home or making normal arrangements.

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.

Please complete Form 2 "Claim for Witness Travel Expenses".

THE ICAC INSPECTOR

The Inspector of the Independent Commission against Corruption (“the ICAC Inspector”) is an independent statutory officer whose role is to oversee the operations and conduct of the Commission 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 ICAC Inspector is set out in Part 5A of the ICAC Act.

The ICAC Inspector is not subject to the Commission in any way.

The ICAC Inspector oversees the Commission and its activities by:

- auditing the operations of the Commission for the purpose of monitoring compliance with the law,
- dealing with complaints about abuse of power, impropriety and other forms of misconduct on the part of the Commission or Commission officers,
- dealing with conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasions of privacy) by the Commission or Commission officers,
- assessing the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.

Under s 57B(4) of the ICAC Act, conduct is of a kind that amounts to maladministration if it involves action or inaction of a serious nature that is:

- a) contrary to law, or
- b) unreasonable, unjust, oppressive or improperly discriminatory, or
- c) based wholly or partly on improper motives.

The ICAC Inspector has extensive powers under the ICAC 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 have engaged in any abuse of power, impropriety or other forms of misconduct or maladministration, you may make a complaint to the ICAC Inspector.

The ICAC Inspector’s contact details are:

Inspector of the Independent Commission Against Corruption
PO Box 5341
Sydney NSW 2001

Phone: (61) 2 9228 3023

Email: oiicac_executive@oiicac.nsw.gov.au

Application No (ICAC use only):
Operation Name/File No(ICAC use only):

APPLICATION FOR ACCESS TO ICAC RESTRICTED WEBSITE

The application is only for persons who have been summonsed to appear at the public inquiry or their legal representative. Once completed the application should be emailed to icac@icac.nsw.gov.au for the attention of the Commission officer nominated in the summons. Alternatively, it can be delivered to the Commission at Level 7, 255 Elizabeth Street, Sydney or mailed to the Commission at GPO Box 500, Sydney, NSW, 2001.

The Commission reserves the right to refuse or cancel access to the ICAC restricted website.

Part 1 – Registration Details

Witness name:

Applicant's name:

Applicant's address:

Applicant's contact telephone number:

Applicant's email address:¹

Applicant's designation: (please circle)

Senior counsel

Junior counsel

Solicitor

Clerk

Other (specify)

¹ The email address will be your user name for access to the secure website. It must be a personal email address and not a generic email address.

Part 2 – Conditions of Access

The ICAC restricted website has been established for the purpose of:

- the Commission’s public inquiry in which the witness has been summonsed to give evidence
- providing authorised persons access to any pre-inquiry disclosure material
- once the inquiry has commenced, providing authorised persons with access to relevant material, including that material proposed to be made an exhibit, lists of proposed witnesses and documents marked for identification .

The content of the ICAC restricted website is subject to a direction of the Commissioner under section 112 of the *Independent Commission Against Corruption Act 1988* (“the Act”) to the effect that the content of the ICAC restricted website may only be published to the witness or a legal representative of the witness who is authorised by the Commission to have access to the ICAC restricted website, and should then only be used by those persons for the purpose of receiving or providing legal advice and representation in relation to the appearance, or reasonably anticipated appearance of the witness at the public inquiry. Commission officers may however publish or communicate material on the ICAC restricted website for the purposes of and in accordance with the Act or pursuant to further direction of the Commission under the Act. It is an offence for any person to publish or communicate the contents of the ICAC restricted website contrary to a section 112 direction.

Only authorised persons may access the ICAC Restricted Web Site. Access to the ICAC Restricted Web Site is via user name and password. Passwords are associated with each user name and are to be known only to the authorised user. Temporary passwords are issued for new accounts and new users are required to change the password when they first log in. The following criteria apply to the selection and use of passwords. A password:

- must be at least six letters or symbols and differ from the user name by at least three letters
- must not be associated directly with the user’s personal details, e.g. related names (maiden, middle or street names) dates of birth, etc., cannot be used
- must be changed at least every three (3) months
- will be masked when entered and displayed on the terminal as a series of stars

If the correct password has not been entered after three (3) attempts the user account will be locked and the Web Content Manager must be contacted to regain access. Authorised users must take reasonable care to ensure their user name and password is protected from unauthorised use.

I understand and agree to the above conditions of use.

.....
Applicant

.....
Date

Part 3 – Approval to Establish User Account

TO: The Web Content Manager

The applicant is a witness/the nominee of a witness who has been summonsed to give evidence at the Commission's public inquiry commencing
(insert date)

A user account may be established for the applicant to access content of the ICAC restricted website in respect of operation/s
(insert operation name/s)

.....
Signature of : Principal/Senior Lawyer
Solicitor to the Commission

Date

INDEPENDENT COMMISSION AGAINST CORRUPTION
STANDARD DIRECTIONS FOR PUBLIC INQUIRIES
JANUARY 2025

These directions apply to the conduct of a public inquiry by the Independent Commission Against Corruption (the Commission). They should be read in conjunction with the Procedural Guidelines issued by the Commission under s 31B of the *Independent Commission against Corruption Act 1988* (“the ICAC Act”).

Sitting times

1. The Commission ordinarily sits from Monday to Friday each week. Usual hearing hours are from 10:00am to 4:00pm, with a luncheon adjournment from 1:00pm to 2:00pm.

Authorisation to appear and legal representation

2. The presiding Commissioner may authorise a person to appear at a public inquiry or a specified part of a public inquiry if it is shown to the satisfaction of the presiding Commissioner that the person is substantially and directly interested in any subject-matter of the public inquiry. Authorisation can be granted subject to conditions.
3. The presiding Commissioner may withdraw authorisation to appear or make the authorisation subject to altered or additional conditions, at any time.
4. Authorisation to appear entitles the person to whom it is granted to participate in the public inquiry subject to the presiding Commissioner’s control and to such extent as the presiding Commissioner considers appropriate.
5. The presiding Commissioner may authorise:
 - a. a person authorised to appear; or
 - b. a person giving evidence at the public inquiry;to be legally represented at the public inquiry or at a specified part of the public inquiry.
6. Where it is proposed that an application will be made for authorisation to appear and/or for a party or witness to be legally represented, the application should be made in writing (including by email) to the Commission in the first instance. The application should provide the name of the party or the witness, the names of the legal representatives who seek authorisation and the reason(s) why the party or the witness has a sufficient interest.
7. The Commission prefers that each person seeking to be legally represented have separate and independent representation. The presiding Commissioner will, however, receive and consider

applications that a single lawyer or team of lawyers be permitted to represent more than one person where:

- a. it can be demonstrated that there is some reasonable purpose for seeking representation of that kind;
- b. the most senior lawyer involved is able to assure the Commission that no conflict of interest is anticipated; and
- c. all of the lawyers involved give an undertaking, through the most senior lawyer, to inform the Commission immediately upon recognising that a conflict of interest has arisen.

Conduct of the public inquiry – witnesses

8. Subject to the control of the presiding Commissioner, Counsel Assisting will determine what witnesses to call at a public inquiry and the order in which they are called. It may be necessary to call some witnesses to give evidence on more than one occasion. In determining what evidence to place before the Commission Counsel Assisting will consider the credibility, relevance and significance of that evidence and the extent to which such evidence will assist the Commission to make factual and other findings.
9. The presiding Commissioner may decide to receive the evidence of a witness orally or by statement. The presiding Commissioner will decide whether to require a witness giving evidence by statement to attend for examination or cross-examination.
10. Persons required to give evidence will be provided with appropriate notice of the time the Commission will call upon their summons to attend and give evidence. Witnesses with a particular period of unavailability are required to give notice of that unavailability to the Commission at the earliest possible opportunity.
11. The Commission will regularly publish on its website a list of witnesses proposed to be called each week of the public inquiry.
12. All witnesses will be called to give evidence by Counsel Assisting, and then examined by Counsel Assisting. If there is more than one Counsel Assisting, there may be circumstances in which a witness might be examined by more than one of the Counsel Assisting. The witness may then be cross-examined by or on behalf of any person considered by the presiding Commissioner to have sufficient interest to do so. The witness may then be examined by his or her own legal representative. Counsel Assisting may re-examine. Duplication and repetition must be avoided.
13. In determining whether a person has sufficient interest to cross-examine a witness, the presiding Commissioner may call upon the cross-examiner to:
 - a. identify the purpose of the cross-examination;
 - b. set out the issues to be canvassed; and
 - c. state whether a contrary affirmative case is to be made, and if so the details of that case.

14. Where, in the opinion of the cross-examiner, public disclosure of any of the matters referred to in paragraph 13 would substantially undermine the forensic utility of the cross-examination, the cross-examiner may, with the leave of the presiding Commissioner, address those matters in writing. To that end, the cross-examiner must be in a position to do so when called upon by the presiding Commissioner.
15. The presiding Commissioner may:
 - a. limit the particular topics or issues upon which a party can examine or cross-examine; and
 - b. impose time limits upon examination or cross examination.
16. Save as set out in paragraphs 17 to 19 of these Directions, the Commission will not apply the rule in *Browne v Dunn*.
17. The Commission expects that, where it is to be invited to reject or not accept the evidence of a witness on a material fact or issue, on the grounds the witness deliberately gave false evidence, the evidence is unreliable, or the witness has made a mistake on a significant issue, the material grounds of such contention must be put to the witness to allow the witness an opportunity to offer an explanation.
18. What is stated in paragraph 17 is not intended to mean that:
 - (a) mere inconsistencies and unimportant differences in the evidence should be raised;
 - (b) once the grounds for rejecting or not accepting the evidence of a witness have been put by one party, other parties need to put them again; or
 - (c) the grounds for rejecting or not accepting the evidence of a witness need to be put where the Commission is on notice from statements made during the public inquiry by or on behalf of a party, or that party's evidence, or from the general way in which the party has conducted its previous questioning, or some similar source, that the witness's evidence is under challenge on those grounds.
19. Once a witness has been cross-examined on a particular issue, no further cross-examination on that issue will be allowed unless the person wishing to cross-examine the witness on that issue can demonstrate the proposed cross-examination differs to a significant degree from the cross-examination that has taken place.
20. The procedure to be followed by any person seeking to place evidence before the public inquiry is set out in the s 31B Procedural Guidelines.
21. Leave may be granted to any affected person (under s 74A(3) of the ICAC Act) to adduce mitigatory evidence bearing upon the exercise by the Commission of its powers under s 74A(2) of the ICAC Act. Any affected person wishing to adduce such evidence should apply for leave prior to the close of evidence at the public inquiry.

Conduct of the public inquiry – documents

22. The s 31B Procedural Guidelines set out the circumstances and procedure by which access will be given to documents prior to the commencement of the public inquiry.
23. Subject to the control of the presiding Commissioner, Counsel Assisting will determine which documents are tendered, and the time at which they will be tendered.
24. A copy of any document proposed to be put to a witness in cross-examination must be provided to Counsel Assisting as soon as possible after a decision is made to use the document for such purpose. In all cases, the document must be provided to Counsel Assisting prior to the commencement of the cross-examination.
25. Any person wishing to have a document placed before the public inquiry must notify the Commission by providing a copy of the document. Commission staff may require the production of other documents. Counsel Assisting will decide whether or not to tender any document. An application may be made directly to the presiding Commissioner to tender a document only after the above procedure has been completed, and Counsel Assisting has refused to tender the document.

Suppression orders

26. Suppression orders may be made relating to names and identifying details of persons who have a legitimate need for protection.
27. Parties granted confidential electronic access to documents should notify the Commission lawyer with carriage of the matter of any application for a suppression order in relation to any document or part of a document. Such notification is to be in writing and must be made as soon as possible. The application should clearly identify the material sought to be suppressed and the public interest grounds on which the material should be suppressed.
28. The presiding Commissioner will determine whether or not to hear oral submissions in support of such written applications.
29. Those making such written applications for suppression orders will be advised once the applications have been determined.

Publication of, and access to, evidence.

30. In respect of all evidence, oral and documentary, the following ruling will apply until vacated either generally or in respect of particular evidence:
 - a. the testimony of any witness before the Commission may be published unless an order is made prohibiting the publication of particular evidence;

- b. any person (or the legal representative of that person) having leave to appear before the Commission will have access to any book, document or writing tendered in evidence for the purpose only of appearance before the Commission and subject to any other direction made by the Commission;
- c. for the purpose of and to the extent necessary for the public reporting of the proceedings of the Commission, any authorised representative of a newspaper, magazine, radio station, online publication or television channel may inspect and take extracts from any book, document or writing tendered in evidence after it has been notified as available for inspection by Counsel Assisting, subject to the conditions that:
 - i. it not be used or permitted to be used for any purpose other than the public reporting of the proceedings of the Commission; and
 - ii. any part of the contents thereof indicated by Counsel Assisting as unsuitable for publication must not be published without the leave of the Commission. Such leave can be sought, for example, if there is a restriction which is believed to obstruct proper reporting of any matter of significance. Any application for leave should be made in writing, in the first instance, to the Solicitor to the Commission.

Submissions

- 31. Unless otherwise ordered, at the conclusion of the evidence oral submissions will not be allowed but orders will be made for the making of written submissions. The Commission may limit the particular topics or issues which may be addressed, and impose time or page limits on submissions. Ordinarily, orders will be made requiring Counsel Assisting to provide written submissions within 14 days of the close of evidence and all other parties to provide their written submissions 14 days thereafter.
- 32. In accordance with Commission practice, a suppression order under s112 of the ICAC Act will usually be made in relation to all written submissions. Ancillary orders may be made to permit publication of certain submissions to specified parties to ensure procedural fairness.

Use of Generative Artificial Intelligence (Gen AI)²

- 33. Generative Artificial Intelligence (Gen AI) is a form of artificial intelligence capable of creating new content, including text, images or sounds, based on patterns and data acquired from a body of training material. That training material may include information obtained from “scraping” publicly and privately available text sources to produce large language models. It may take the form of generic large language model programs or more bespoke programs specifically directed to lawyers. Such programs may use “chatbots” and prompt requests and refined requests from the users of such programs.
- 34. These directions apply to both closed-source and open-source large language model Gen AI and are directed to circumstances where Gen AI may be used to assist legal practitioners and

² This section is largely derived from the NSW Supreme Court Practice Note SC GEN 23 – Use of Generative Artificial Intelligence (GEN AI).

unrepresented parties involved in a public inquiry with various tasks, including drafting documents and summarising information.

35. For the purpose of these directions:

- a. Gen AI does not include technology or functionality which:
 - i. merely corrects spelling or grammar, provides transcription, assists with formatting and otherwise does not generate substantive content;
 - ii. generates chronologies from original source documents;
- b. nothing is intended to preclude or apply to the use of:
 - i. search engines which produce a list of websites that match search criteria but which do not produce an apparently personalised textual answer in response to a specific prompt;
 - ii. dedicated legal research software which uses AI or machine learning to conduct searches across material comprising legislation or subordinate legislation, judgments of courts or tribunals, and/or books or articles written for a legal audience.

36. Legal practitioners and unrepresented parties should be aware of limits, risks and shortcomings of any particular Gen AI program which they use. These may include:

- a. the scope for “hallucinations”, that is, the generation of apparently plausible, authoritative and coherent responses but which are in fact inaccurate or fictitious. Examples include false citations and fabricated legislative, case or other secondary references;
- b. the dependence of Gen AI on the quality and reach of underlying data sets, including the possibility that underlying database(s) may include misinformation or selective or incomplete data, data that is not up to date or data that is not relevant in New South Wales or Australia;
- c. the scope for biased or inaccurate output including by reason of the nature or limitations of the underlying data sets;
- d. the fact that any search requests via a chatbot or interactions or prompts within a Gen AI program may, unless disabled, be automatically added to the large language model database, remembered and used to respond to queries from other users;
- e. the lack of adequate safeguards, to preserve the confidentiality, privacy or legal professional privilege that may attach to information or otherwise sensitive material submitted to a public Gen AI chatbot; and
- f. the fact that data contained in a Gen AI data set or database may have been obtained in breach of copyright.

37. Legal practitioners and unrepresented parties should be aware that data entered into Gen AI programs may be used to train the large language model, potentially making confidential information available to others. Any information entered into a public AI chatbot should be regarded as being published to all the world.

38. Information subject to a suppression order must not be entered into any Gen AI program. Should this occur, the person responsible must notify the Commission as soon as possible.
39. Gen AI must not be used in generating the content of affidavits, witness statements, character references or other material that is intended to reflect the deponent or witness' evidence and/or opinion, or other material tendered in evidence or used in cross examination. Affidavits, witness statements, character references should contain and reflect a person's own knowledge, not AI-generated content.
40. Gen AI must not be used for the purpose of altering, embellishing, strengthening or diluting or otherwise rephrasing a witness's evidence when expressed in written form.
41. An affidavit, witness statement or character reference prepared for the purpose of the public inquiry must contain a disclosure that Gen AI was not used in generating:
 - a. its content (including by way of altering, embellishing, strengthening or diluting or rephrasing a witness's evidence); or
 - b. subject to leave having been obtained in accordance with paragraph 43 below, the content of any annexure or exhibit prepared by the deponent of the affidavit or witness statement or character reference for the purposes of his or her evidence.
42. In exceptional cases, leave may be sought to use Gen AI for the preparation or generation of any annexure or exhibit to an affidavit, witness statement or character reference. Any application for leave must identify:
 - a. the proposed use of Gen AI;
 - b. the Gen AI program that will be used (including the relevant version);
 - c. whether it is a closed-source or open-source program and or contains privacy and or confidentiality settings; and
 - d. the benefit to be derived from the proposed use of Gen AI in preparation of the annexure or exhibit.
43. Where Gen AI has been used in the preparation of written submissions or summaries or skeletons of argument, the author must verify in the body of the submissions, summaries or skeleton, that all citations, legal and academic authority and case law and legislative references:
 - a. exist,
 - b. are accurate, and
 - c. are relevant to the proceedings,and make similar verification in relation to references to evidence in written submissions or summaries or skeletons of argument to evidence (whether the evidence be contained in affidavits or transcript).
44. Such verification must not be carried out by using a Gen AI tool or program.

45. Gen AI must not be used to draft or prepare the content of an expert report (or any part of an expert report) without prior leave of the Commission.
46. Any application for leave must identify:
 - a. the proposed use of Gen AI;
 - b. the Gen AI program (including the version) that will be used and whether it is a closed-source or open-source program or contains privacy and or confidentiality settings;
 - c. the benefit to be derived from the proposed use of Gen AI in the preparation of the expert report;
 - d. any documents which it is proposed to submit to the Gen AI program for the purposes of generating any aspect of the expert report.
47. If an expert witness obtains prior leave to use Gen AI for any purpose in preparing an expert report for the Commission, the expert witness must:
 - a. disclose in the report what part(s) of it was prepared using Gen AI or drawing upon Gen AI produced material and the Gen AI program, (and version) that was used;
 - b. keep records and identify in an annexure to the report a record of how the Gen AI tool or program was used (for example any prompts used, any default values used, and any variables set), except where the presiding Commissioner grants leave to dispense with this requirement (for example, where the presiding Commissioner determines this to be voluminous or unnecessary); and
 - c. if the use of Gen AI is regulated or addressed by any relevant code of practice or principles that bind or apply to the expert, identify that fact and annex to the report a copy of the relevant code(s) or principle(s).
48. Examples of the above use of Gen AI may include experts using software that uses Gen AI to analyse sound, graphic or video data, or to interrogate very large data sets, or to conduct statistical analysis.
49. Legal practitioners and unrepresented parties must draw the requirements of these directions to the attention of experts when instructing them.

Liaison with the Commission

50. Any contact with the Commission made necessary by these directions, or other enquiries in respect of the conduct of the public inquiry, should be made through the Commission lawyer with carriage of the relevant investigation to which the public inquiry relates.

INDEPENDENT COMMISSION AGAINST CORRUPTION

PUBLIC INQUIRY PROCEDURAL GUIDELINES

1. Preliminary

- 1.1 These Procedural Guidelines (“the Guidelines”) are issued in accordance with the provisions of s 31B of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”) and are directed to members of the Commission’s staff and counsel appointed under s 106 of the ICAC Act to assist the Commission (“Counsel Assisting”).
- 1.2 In accordance with s 31B of the ICAC Act, the Guidelines provide guidance to Commission staff and Counsel Assisting on a number of aspects of the conduct of public inquiries, in particular in respect of the matters referred to in s 31B(2) (a) to (e) of the ICAC Act.
- 1.3 The manner in which the Guidelines, or any one or more of them, are implemented in respect of a particular public inquiry, and the timing of such implementation, are matters that are within the discretion of the presiding Commissioner. The presiding Commissioner will take into account the following:
- a) the efficient conduct of the public inquiry;
 - b) the effective pursuit of the Commission’s functions under Part 4 of the ICAC Act;
 - c) the requirements of procedural fairness as determined by the presiding Commissioner that apply in respect of affected persons during the public inquiry in question having particular regard to the matters addressed in s 31B of the ICAC Act; and
 - d) such other matters that the presiding Commissioner considers are relevant to the public inquiry including protection of the public interest and the prevention of breaches of public trust.³

2. Section 31B of the ICAC Act

- 2.1 Section 31B of the ICAC Act provides that:
- (1) The Commissioners are to issue guidelines relating to the conduct of public inquiries of the Commission to members of staff of the Commission and counsel appointed under section 106 to assist the Commission.
 - (2) The guidelines are to provide guidance on the following aspects of the conduct of public inquiries:
 - (a) the investigation of evidence that might exculpate affected persons,
 - (b) the disclosure of exculpatory and other relevant evidence to affected persons,
 - (c) the opportunity to cross-examine witnesses as to their credibility,

³ Section 12 of the ICAC Act.

- (d) providing affected persons and other witnesses with access to relevant documents and a reasonable time to prepare before giving evidence,
- (e) any other matter the Commission considers necessary to ensure procedural fairness.

(3) The Commission is to arrange for the guidelines to be tabled in both Houses of Parliament and to be published on a website maintained by the Commission.

(4) In this section:

affected person means a person against whom substantial allegations have been made in the course of or in connection with the public inquiry concerned.

2.2 The ICAC Act does not define “exculpatory evidence”. For the purpose of the Guidelines, “exculpatory evidence” means credible, relevant and significant evidence that tends to establish that a person has not engaged in the corrupt conduct that is the subject of the Commission’s investigation.

3. The investigation and consideration of evidence that might exculpate affected persons

3.1 A key consideration in determining what evidence to obtain during the course of an investigation is the extent to which it will enhance the ability of the Commission to establish the truth. Relevant evidence includes exculpatory evidence.

3.2 The investigation case manager is responsible for determining the most appropriate investigation strategy. The investigation strategy should include consideration of any reasonable steps that can be taken to identify and follow investigative leads which suggest that exculpatory evidence exists. Commission staff involved in the investigation should bring to the attention of the investigation case manager exculpatory evidence of which they are aware and investigative leads that suggest to them, on reasonable grounds, that exculpatory evidence may exist.

3.3 During the pre-public inquiry stage of an investigation, the investigation case manager should ensure, in consultation with the senior case lawyer assigned to the investigation, that relevant material, including exculpatory evidence, within the Commission’s holdings is registered in the Commission’s case management system and entered into the Commission’s records management systems. Any question as to the relevance of material, or whether it is exculpatory, will be resolved by the senior case lawyer.

3.4. Prior to the commencement of the public inquiry, the investigation case manager and the senior case lawyer should further consult in relation to the Commission’s holdings to consider whether any material, including material that has not been registered in the Commission’s case management system and entered into the Commission’s records management systems, has become relevant to the Commission’s investigation. This includes evidence that, as a consequence of the progress of the Commission’s investigation, is exculpatory. Any question as to the relevance of material, or whether it is exculpatory, will be resolved by the senior case

lawyer. In the case of material that has become relevant to the Commission's investigation, but has not been registered in the case management system and entered into the Commission's records management systems, the investigation case manager should take steps to have such material registered and entered.

- 3.5 The senior case lawyer, in consultation with the investigation case manager, is responsible for determining the material that will comprise the brief to Counsel Assisting.
- 3.6 The senior case lawyer will ensure that exculpatory evidence that has been obtained during the pre-public inquiry phase of an investigation is included in the brief of evidence for Counsel Assisting. The senior case lawyer will also bring to the attention of Counsel Assisting any exculpatory evidence that comes to his or her attention during the public inquiry, the existence of which is unknown to Counsel Assisting. In either case, Counsel Assisting will bring such evidence to the attention of the presiding Commissioner, who may direct that further investigation be undertaken.
- 3.7 During the course of a public inquiry, an affected person may seek to place exculpatory evidence before the Commission. If so, the affected person should nominate in writing a person or persons who can give the evidence. The affected person should identify in writing any documentary material that the affected person contends is exculpatory. The affected person should also provide a statement of the proposed evidence or, if that is not possible, a written proof of the evidence that the affected person believes that a witness can give. Copies of the relevant documents, statements or proofs of evidence must be provided to Counsel Assisting as soon as practicable after the existence of the evidence, or its potential relevance to the investigation, becomes known. In consultation with the presiding Commissioner, Counsel Assisting will determine whether such evidence requires further investigation by the Commission, whether any nominated person should be called to give evidence, or whether any document should be tendered.

4. The disclosure of exculpatory and other relevant evidence to affected persons

- 4.1 The Commission's duty to afford procedural fairness to an affected person requires it to provide the affected person with material that is adverse to that person and upon which the Commission may rely. The affected person should be given a reasonable opportunity to consider and respond to that material. Where the Commission's investigation includes a public inquiry, it will make available to an affected person exculpatory evidence in its possession. The timing of the disclosure of any such evidence, and the form in which disclosure will be made, are matters for the presiding Commissioner.
- 4.2 Where Counsel Assisting is aware of evidence, which is adverse to the interests of an affected person and Counsel Assisting intends to rely upon such evidence to contend that an adverse finding, or findings, against that person should be made, Counsel Assisting will ensure that the substance of that evidence is disclosed to the affected person.

- 4.3 Where Counsel Assisting intends to contend that the evidence of a witness should be preferred over that of an affected person for the purpose of the Commission making a finding about the affected person and Counsel Assisting is aware that:
- (a) the witness has made an inconsistent statement or previously given inconsistent evidence,
 - (b) the witness has been subject to an adverse finding as to credibility,
 - (c) the witness suffers, or has suffered, from any physical or mental condition that may affect the reliability of the person's evidence,
 - (d) a concession or benefit has been offered or provided to the witness to secure that person's evidence, or
 - (e) the witness has been convicted of any criminal offence or is, or has been, the subject of disciplinary proceedings relevant to the conduct of the investigation,

Counsel Assisting will disclose that information to the affected person at an appropriate time.

5. The opportunity to cross-examine witnesses as to their credibility

- 5.1 Persons that the presiding Commissioner determines have a sufficient interest may apply to cross-examine a witness during the course of a public inquiry, including as to the witness's credibility.
- 5.2 A witness may only be cross-examined with the leave of the presiding Commissioner and only in respect of a matter that the presiding Commissioner considers is relevant to the investigation.⁴
- 5.3 Leave will be given to cross-examine a witness as to his or her credibility where the presiding Commissioner considers that the credibility of the witness is of sufficient relevance to the investigation.

6. Access to relevant documents and a reasonable time to prepare before giving evidence

- 6.1 Where it is proposed to require a person to appear before the Commission at a public inquiry, the person will be given reasonable notice in order to prepare for, and participate in, the public inquiry, including to seek legal advice or arrange for legal representation. What is "reasonable notice" will depend on the particular circumstances of the case, including the individual circumstances of the person whose appearance is required, operational exigencies and the balance of convenience.
- 6.2 The rules of procedural fairness, as they apply to the Commission, do not require the Commission to provide a witness with access to any evidence before the witness is examined.

⁴ Section 34(1) of the ICAC Act.

- 6.3 Where to do so would not prejudice the investigation, the Commission may provide a witness with access to relevant documents before the public inquiry or before the witness is examined. A decision as to whether relevant documents will be disclosed to a witness before the witness is required to give evidence in a public inquiry, the extent of the disclosure, and the method of disclosure will be determined by the presiding Commissioner.
- 6.4 Any document that is to be disclosed may be subject to the redaction of information of a private or personal nature that is not relevant to the investigation. If the information is relevant to the investigation, but its disclosure would adversely affect the privacy or reputation of a person who is not the subject of the investigation, the Commission will consider what measures should be taken to protect the privacy or reputation of that person, including whether any directions should be made under s 112 of the ICAC Act, prior to making the information available to the witness.
- 6.5 The Commission maintains a restricted access portal on its public website for the purpose of:
- (a) providing authorised persons (witnesses and their legal representatives and other parties deemed to have sufficient interest in the subject matter of the investigation to warrant access) with access to relevant documents, and
 - (b) providing authorised persons with access to relevant documents, once a public inquiry has commenced, including documents proposed to be made exhibits.
- 6.6 The Commission's restricted access portal may be used for the disclosure of relevant documents to authorised persons for the purpose of a public inquiry where, in the Commission's opinion, the use of that website represents the best balance of efficiency and security. Otherwise, portable electronic media storage (that is, DVD or USB) may be used for the disclosure of relevant documents to authorised persons, or the presiding Commissioner may approve the provision of physical copies of the relevant documents.
- 6.7 Where the disclosure of relevant documents to a witness prior to a public inquiry is authorised, the senior case lawyer assigned to the investigation will be responsible for making arrangements for the witness or their legal representative to have access to those documents according to the agreed method of disclosure.
- 6.8 Counsel Assisting may tender as exhibits relevant documents during the course of a public inquiry. Subject to any non-publication direction under s 112 of the ICAC Act, any person (or the legal representative of that person) having leave to appear before the Commission, or any other person who has a significant interest in the issue(s) to which the exhibit relates, is entitled to have access to the exhibit. Such access is subject to any direction made by the presiding Commissioner and will usually be provided by publishing the exhibit on the Commission's public website.

6.9 The presiding Commissioner may consider adjourning the evidence of a witness if satisfied it is appropriate to do so to enable the witness to have sufficient time to prepare before giving evidence, or giving further evidence, or to consider evidence placed before the public inquiry in respect of which the witness previously did not have knowledge.

7. Other considerations necessary to ensure procedural fairness

7.1 A person required to attend a public inquiry is entitled to be informed, before or at the time of their appearance, of the nature of the allegation or complaint being investigated and the general scope and purpose of the public inquiry.⁵ The Commission does not fail to provide procedural fairness merely by not providing this information at an earlier point in time than required.

7.2 The nature of the allegations under investigation, and the general scope and purpose of the public inquiry, will be set out in each summons served on a witness requiring attendance at the public inquiry.

7.3 The nature of the allegations under investigation, and the general scope and purpose of the public inquiry, will be announced by the presiding Commissioner at the commencement of the public inquiry and will be published on the Commission's public website. The opening address of Counsel Assisting will provide further information concerning the allegations under investigation, which may include the identity of each affected person, as known by the Commission at the time of the commencement of the public inquiry.

7.4 The Commission will seek to ensure that an affected person has a reasonable opportunity to address material, upon which the Commission may rely, which is adverse to his or her interests.

7.5 Counsel Assisting should bring to the attention of any affected person, either through the process of examination of the affected person or other witnesses, the tendering of documentary or other evidence in the course of the public inquiry or by way of submissions, potential adverse findings against the affected person that Counsel Assisting contends should be made by the Commission, and the substance of the evidentiary grounds for such findings.

7.6 If any further potential adverse findings are identified during the drafting of the investigation report that were not identified in Counsel Assisting's submissions, the Commission will notify the relevant affected person(s) of the potential adverse finding and provide the person(s) with an opportunity to make submissions in relation to the potential adverse finding.

⁵ Section 30(3) and s 31(6) of the ICAC Act.

CLAIM FOR WITNESS EXPENSES

NAME:

ADDRESS:

POSTCODE:

DAYTIME CONTACT NO.

ATTENDANCE DETAILS:	DATE(S)	TIME ARRIVED	TIME DEPARTED
.....
.....
.....

LOSS OF INCOME

For ordinary witnesses the Commission will reimburse for loss of income, salary or wages as follows:

- i. up to 4 hours loss of working time on that day, not exceeding \$50.05 per day
- ii. more than 4 hours loss of working time on that day, not exceeding \$100.80 per day.

If employed and claiming loss of employment income your employer should sign the certificate on the claim form.

In the case of experts required to give evidence, the Commission will reimburse as follows:

- i. for the first two hours or part thereof - \$108.05 per day
- ii. for each additional half-hour or part thereof - \$20.70 per half hour up to a maximum of \$204.60 per day.

EMPLOYER'S CERTIFICATE

I certify that

(witness's name)

Will have wages/salary deducted from the time s/he is absent by reason of being a witness for the Independent Commission Against Corruption for the periods indicated above.

Will have wages/salary deducted from the time s/he is absent by reason of being a witness for the Independent Commission Against Corruption for the periods indicated above.

EMPLOYER'S NAME AND TITLE:

EMPLOYER'S ADDRESS:

SIGNATURE OF EMPLOYER:

DATED:

SELF EMPLOYED/EXPERT WITNESS CERTIFICATE

IMPORTANT PLEASE NOTE:

If payment is made direct to you for loss of income, this amount must be included in your next tax return.

I certify that I have losthours of work in connection with assistance given by me to the Independent Commission Against Corruption.

Please note that you may be asked to verify your claim for actual lost time.

SIGNATURE:

BUSINESS NAME:

DATED:

.....

.....

.....

.....

CLAIM FOR WITNESS TRAVEL EXPENSES

NAME:

ADDRESS:

POSTCODE:

DAYTIME CONTACT NO.

CLAIM FOR TRAVEL:	TRAIN		\$
<i>(attach receipts and/or tickets)</i>	BUS		\$
	TAXI		\$
	OTHER:		\$
	PRIVATE VEHICLE:	km	Engine Capacity
	<i>(please state kilometres travelled / engine capacity)</i>		

CLAIM FOR MEALS:	DATE	TIME	
<i>(attach receipts)</i>	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$

OTHER EXPENSES	DESCRIPTION	
<i>(attach receipts)</i>	\$
	\$
	\$
	\$

TOTAL AMOUNT CLAIMED: \$

I certify that the above particulars are true and correct.

SIGNATURE:

DATED:



INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES

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Sydney NSW 2001 Australia

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