

INFORMATION FOR LAWYERS



WHEN MAY A LAWYER BE ENGAGED?

When the Commission receives a complaint under s 33 of the *Integrity Commission Act 2009* (the Act), it may put that complaint into 'assessment' and subsequently 'investigation' under the Act. The Commission may also commence investigations of its own-motion under ss 45 and 89 of the Act. Any type of investigation may then proceed to an integrity tribunal under Part 7 of the Act.

There is a right to legal or other representation at certain points during all of these processes (assessments, investigations and integrity tribunals).

Section 49 of the Act gives a person 'required or directed to give evidence or answer questions as part of an investigation' the right to representation by a legal practitioner or other agent. By way of s 35(4), that right is also taken to apply during assessments.

During an assessment or investigation, a person may be required or directed to give evidence or answer questions under one of several sections of the Act. Most commonly, it will be during an investigation by way of a coercive notice to attend and give evidence issued under s 47(1)(b) of the Act. A requirement or direction may also be given under s 52(1)(j)(ii) or s 52(1)(j)(iii) during a search of a public authority or private premises.

A person may also seek your advice about a coercive notice issued under ss 47(1)(a) or (c) of the Act.

Section 66(1) of the Act gives a public officer who is the subject of an inquiry the right to be represented by a legal practitioner or other agent when appearing before an integrity tribunal during the inquiry. Under s 66(2) of the Act, the Commission may also allow witnesses appearing before an Integrity Tribunal to be represented by a legal practitioner or other agent.

More information about Commission process can be found on the [website](#). You may also speak to the Commission contact listed on any notice issued to your client.

CONFIDENTIALITY (SECTION 98)

A notice issued to your client may be subject to confidentiality under s 98 of the Act. Section 98 confidentiality means that, unless your client has a 'reasonable excuse', they must not disclose to any other person:

- (a) the existence of the notice;
- (b) the contents of the notice; or
- (c) any matters relating to or arising from the notice.

Under s 98(2)(a)(i) of the Act, the seeking of legal advice in relation to the notice is a 'reasonable excuse' for the purposes of s 98. Once your client has disclosed the notice to you, the same confidentiality requirements will apply to you by way of s 98(1A) of the Act.

The penalty for breaching s 98 confidentiality is a fine not exceeding 2,000 penalty units.

FEES

Your client may be eligible to have your fees reimbursed. In all instances other than an integrity tribunal, this is a matter that your client must raise directly with their employing public authority. If s 98 confidentiality applies, your client may have a reasonable excuse to discuss the matter with their employer in order to seek reimbursement. If you are unsure, you may seek advice from the Commission contact listed on the notice.

In addition to any reimbursements that may be available through their employer, witnesses appearing at an integrity tribunal may be eligible for reimbursement through the Commission. Under s 83(1) of the Act, a witness appearing at an integrity tribunal may apply to the CEO of the Commission for financial assistance in relation to their legal costs. Further information about this process, including what matters the CEO may take into account, is set out in the remainder of s 83. Your client may also be eligible to claim an allowance under s 84, and/or to compensation for loss of income under s 85.

PRIVILEGE

Privileges, including the privilege against self-incrimination, are preserved in Commission processes. The applicable definition of privilege is set out in s 4 of the Act.

If your client wishes to claim privilege in relation to a requirement or direction issued by the Commission, the process for doing so is set out in s 92 of the Act. Once your client has told the Commission they wish to claim privilege, the Commission may withdraw the requirement or direction. If it does not withdraw the requirement or direction, your client will be issued with a 'notice to comply with a requirement or direction'. If your client wishes to persist with the claim, they must apply to the Supreme Court of Tasmania for the Court to determine the claim of privilege within 14 days of receiving the notice to comply.

PROCEDURAL FAIRNESS

In accordance with the Act, the Commission must observe the rules of procedural fairness.

In practice this means ensuring that a person has had a chance to be heard. It includes undertaking interviews where required, and providing an opportunity to a person to respond to proposed adverse findings or comments. In such instances, the Commission will provide the person with either a full copy or relevant excerpts of the draft report. Any comments or submissions made by the person will be taken into account before finalising the report.

Guidelines to assist persons involved in an assessment or an investigation to understand [procedural fairness](#) are available on the Commission's [website](#).

COERCIVE INTERVIEWS (SECTION 47(1)(B))

If your client has been issued with a notice under s 47(1)(b) of the Act to attend and give evidence, the nature of the evidence they are required to give will be set out in the schedule of the notice. Your client will also receive written information about the process and their rights.

The obligations under the notice fall on the person to whom it was issued, not their representative. During the interview you cannot answer questions or give evidence on your client's behalf. However, you may ask questions, and you may also request a break to speak with your client privately.

Coercive notices are usually issued at least seven days in advance of the interview. Your client should inform the Commission at least 48 hours before the interview of the identity of their representative. If they seek to be represented by a person whose presence may compromise the investigation (e.g. they are somehow involved in the matter subject to investigation), the Commission may require them to be represented by someone else.

Commission interviews are recorded and are usually transcribed. If you or your client require a copy of the transcript, you may advise the Commission at the conclusion of the interview. Alternatively, you or your client may request a copy of the transcript by writing to the Commission at any other time.

Transcripts are generally not provided until the conclusion of all interviews in an investigation. The provision of a transcript is at the Commission's discretion, and, in exceptional circumstances, the Commission may determine it is not appropriate to provide a transcript.

INTEGRITY TRIBUNALS

If your client is involved in an integrity tribunal, you can contact the Commission for more information about the process.

