

# INFORMATION FOR WITNESSES

OCTOBER 2014



## WHAT IS THE INTEGRITY COMMISSION?

The Integrity Commission is an independent body established on 1 October 2010 by the *Integrity Commission Act 2009* (the Act). The three primary objectives of the Commission are to:

- improve the standard of conduct, propriety and ethics in public authorities in Tasmania;
- enhance public confidence that misconduct by public officers will be appropriately investigated and dealt with; and
- enhance the quality of, and commitment to, ethical conduct by adopting a strong, educative, preventative and advisory role.

The Commission may investigate complaints made in writing alleging misconduct or serious misconduct and which involve a public officer or it may commence an investigation on its own motion. Misconduct and serious misconduct are defined in s 3 of the Act.

The Commission has broad powers of investigation to enable it to gather evidence. Its powers include the power to direct or require a person to give evidence to an investigator/assessor.

## ABOUT YOUR NOTICE

You have received a notice to appear with the Commission to give evidence to an investigator (or an assessor). Investigations by the Commission are required to be conducted in private, unless otherwise authorised, or an Integrity Tribunal has been convened. The notice may also require you to produce documents.

**Please read the notice and accompanying information carefully. Unless you have a reasonable excuse, you must do everything your notice asks you to do. There may be serious penalties if you do not.**

Your notice tells you the time and date you must attend at the Commission. The notice includes a schedule which sets out general information concerning the matter being investigated and for which your evidence is required. The information in the notice does not advise whether you are a witness in the investigation or a witness who is a subject officer of the allegations.

The notice will indicate if there are any confidentiality obligations on disclosing to anyone that you have received the notice. You may be committing an offence under the Act if you fail to comply with any confidentiality restriction without reasonable excuse.

You may commit an offence if you fail to attend at the time and date specified in the notice without reasonable excuse. It is also an offence to fail to produce any documents or other things required to be produced by the Notice without reasonable excuse.

If you have any questions about the notice or attending the Commission to give evidence please contact the investigator named in the notice, or your lawyer. Please note the investigator is unable to give you legal advice.

## LEGAL ASSISTANCE

If you think you need legal advice or legal representation you can contact a lawyer.

If you are an employee of the state service, you may be eligible for legal assistance under the Employment Directions. You should contact your head of agency for further details about your eligibility or a copy of the relevant Employment Direction.

If you are not a state service employee, your employer may have a legal assistance program that you are able to access.

A person who is served with a notice and required or directed to give evidence or answer questions is able to be represented by a legal practitioner or other agent.

If you want to be represented by a lawyer or another agent, you must make your own arrangements, and do so in time for your attendance at the Commission. Your lawyer, or agent, should attend with you on the day nominated in the notice.

## WHEN YOU GIVE EVIDENCE

Unless special circumstances apply, evidence will be taken at the Commission, usually in an interview room. An interview is one part of an investigation; it is not a court proceeding.

The investigator in charge of the investigation will be at the interview, and may be accompanied by a person authorised to assist the investigator. Sometimes the investigator will be assisted by a lawyer for the Commission.

You will be asked to give evidence on oath or affirmation. As a witness you will be asked questions by the investigator or the person assisting the investigator, or by the lawyer for the Commission.

You must answer questions or produce documents when required, or directed unless you make a claim of privilege. Privilege is defined in the Act and includes the privilege against self-incrimination, the privileges of spouses and the privileges of Parliament. If you make a claim of privilege you can refuse to answer a question or produce a document. The investigator will consider your claim of privilege and either withdraw the direction or requirement or issue a notice to comply.

If the investigator issues a notice to comply with the direction or requirement, you must either comply with the notice, or make an application to the Supreme Court to determine the claim of privilege. An application to the Supreme Court must be made within 14 days of being given notice to comply. Information about making a claim of privilege is in s 92 of the Act.

Evidence or information obtained by the Commission under notice may be used after the investigation, in the prosecution of persons for offences, or in proceedings to investigate a breach of a code of conduct or in disciplinary proceedings under any Act.

## PROCEDURES FOR TAKING EVIDENCE

The Commission has the power to do all things reasonably necessary or convenient to be done in connection with the performance of its functions. It also performs its functions and exercise its powers with as little formality and technicality as possible.

The Commission is not bound by the rules of law governing the admission of evidence but may inform itself of any matter in such manner as it thinks fit.

Statements or records of your interview, including transcripts, taken by Commission investigators will not, as a matter of course, be made available to you until after you have given evidence. The timing of access to such material will be determined by the Commission, and is dependent on a variety of considerations.

As a witness you may be called to give evidence or produce documents more than once during an investigation. After an investigation is finished, the investigator will produce a report. If there is any adverse material or there are any adverse findings or comments made about a person in such a report then the person will be given an opportunity to respond before the report is finalised.

If your notice has confidentiality restrictions attached to it, the confidentiality extends to:

- any evidence or information produced or provided to the Commission;
- any information that might enable a person who is the subject of an investigation to be identified or located;
- the fact that a person has been required or directed by an investigator to provide information, give evidence or produce anything;
- the contents of any documents seized under the Act; and
- any obligations or duties imposed on a person by the notice.

Confidentiality may be imposed by the Commission for reasons including, but not limited to:

- protecting the reputation of a person adversely named in evidence;
- protecting the integrity of the investigation including any evidence yet to be given;
- to prevent an allegation being made public before a response is received; and
- to protect person from adverse action by another person.

It is an offence when giving any information to the Commission, to make a statement knowing it to be false or misleading. It is also an offence to omit any matter from a statement knowing that the omission will make the statement false or misleading. Significant penalties apply for making a false or misleading statement.

## LEGAL REPRESENTATION

You should inform the Commission as soon as possible (at least 48 hours before a scheduled interview) of the identity of your lawyer or other agent.

Where you seek to be represented by a person who may compromise the investigation (for example because they have a conflict of interest or are otherwise connected with the matter under investigation), the Commission may require you to be represented by a different agent.

During an interview you may seek short adjournments to confer with your lawyer in private. The Commission has a separate private room that may be used by you. The obligations to give evidence or information or produce documents in accordance with the notice and the Act, are directed to you as the recipient. Accordingly your lawyer cannot answer or give evidence on your behalf. You or your lawyer may seek clarification of an issue if that will assist you to give evidence.

## INTERVIEW TIMES

The Commission will normally schedule interviews from Monday to Friday between 9:00am and 4:30pm.

A lunch break will be scheduled at 1:00pm for 45 minutes if required. A morning and afternoon break will be scheduled if they are required. The Commission will supply lunch if necessary.

The Commission will try to accommodate any requests a witness has to attend an interview out of normal interview times.

The Commission is unable to advise a witness how long the interview will be. Most witnesses will be required for at least a few hours, but some will need to allow a full day.

## RECORDING YOUR EVIDENCE

Your evidence will be electronically recorded and a written transcript made from the recording.

At the end of an interview, the investigator will give you an opportunity to ask for a copy of the transcript. If you later decide that you want a copy of your transcript, you should make a request in writing to the investigator.

The Commission will determine the appropriate time, if any, to give a witness access to their transcript of evidence but it will usually occur after the conclusion of all interviews in an investigation. In exceptional circumstances, the Commission may determine it is not appropriate to provide a transcript. When the Commission provides a transcript, confidentiality in accordance with s 98 of the Act may also apply to the circumstances in which the transcript can be used or communicated.

## WHAT HAPPENS AFTER YOU GIVE EVIDENCE?

After you have given evidence you may voluntarily provide further information or documents to the Commission if you consider it relevant to the matter you were interviewed about.

If you have been the subject of allegations of misconduct then the Commission will advise you or your lawyer of any possible adverse material, findings or comments. You will then have an opportunity to make formal submissions or a further response. More information about the procedural fairness process is available in the Commission brochure: *Guidelines for procedural fairness*, available on the Commission website.



You may not necessarily be made aware of the outcome of the investigation.

If confidentiality has been attached to your notice and the giving of evidence, the Commission may lift the confidentiality at an appropriate time. The Commission will advise you in writing when confidentiality has been removed.

## COMMISSION REPORTS

After an investigation (or assessment) has been completed, the investigator must prepare a report of factual findings which is provided to the CEO. Any report of an investigation will be provided to the Board of the Commission. The Board is then required to make a determination about the investigation.

The investigation or assessment may be the subject of a report provided to Parliament and made public, or to the Joint Standing Committee on Integrity.

An investigation or assessment report and the supporting evidence, including a transcript of your evidence, may be referred to one or more public authorities for further investigation or action.

## YOUR PROTECTION

It is an offence under the Act for a person to use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage to you on account of you having given evidence or produced anything to the Commission.

If you have any concerns about these issues please contact the investigator named in the notice or the solicitor to the Commission.

## EXPENSES

The Commission does not generally reimburse expenses associated with giving evidence unless the matter is before an Integrity Tribunal.

## SECURITY AT THE COMMISSION

Please note that the foyer of the Commission and interview rooms are monitored by closed circuit TV.

## CONTACT US

Our reception is open 9:00 am to 4:30 pm, Monday-Friday

Level 2  
199 Macquarie Street  
Hobart TAS 7000

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