



Standard directions for public examinations

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The following directions ordinarily apply to the conduct of public examinations in an investigation by IBAC.

Preamble

Public examinations, which may be held in circumstances prescribed in section 117 of the *Independent Broad-based Anti-corruption Commission Act 2011* (the Act), are for the purposes of an investigation, in order that the Commission may inform itself on relevant matters in an expositive way.

The Commission, with the assistance of counsel assisting, has full control of the examinations, the witnesses to be called and their order, the documents and things to be tendered, and the matters and issues to be covered in evidence.

Public examinations are expositive, they are not adversarial and no witness or represented party has a “case” to pursue. Rather, such persons have evidence to give and submissions to make as and when required or permitted. It follows that parties do not have the right to call witnesses or seek production of documents.

Except where the rules of procedural fairness otherwise require, such examinations are not held for the purposes of indulging the private interests of persons appearing. In the absence of examination or cross examination of a witness by an affected person, the requirements of procedural fairness may be met in other ways, such as by giving the person an opportunity to reply to adverse evidence under oath, or to make submissions before any adverse opinion is expressed in an IBAC report.

These directions are subject to possible modification in relation to particular examinations, and revision at any time.

Sitting times

1. Usual hearing hours will be from 10 am to 4 pm, with a luncheon adjournment from 12.30 pm to 1.30 pm.

Scope of examinations

2. A general summary of the scope and purpose of the matters witnesses are to be examined on will ordinarily be published on the Commission’s website at www.ibac.vic.gov.au.
3. The degree of detail to be given in this context depends on the perceived risk of prejudice to the investigation (refer section 130(2) of the Act), whilst the scope and purpose that is described may change depending on where the evidence leads.

Appearance and representation

4. In accordance with section 119A of the Act, the Commission may authorise a person to appear at a public examination if satisfied that the person has a substantial and direct interest in the subject matter of the examination and it is appropriate for the person to appear at the examination as an interested party. The Commission may further authorise that person to be represented by an Australian legal practitioner.
5. Such authorisation entitles the party to whom it is granted to participate in the proceedings of the Commission subject to its control and to such extent as it considers appropriate.
6. Subject to sections 127(2) - (5) of the Act concerning possible conflict of interest, a person giving evidence at a public examination is entitled to be legally represented by a practitioner of their choice.

7. The Commission prefers that each person to be legally represented has separate and independent representation. The Commission 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 could be demonstrated that there is some reasonable purpose for seeking representation of that kind;
 - (b) the most senior lawyer involved is able to satisfy it that no conflict of interest or circumstances prescribed in section 127(2) of the Act is anticipated;
 - (c) all of the lawyers involved give an undertaking, through the most senior lawyer, to inform it immediately upon recognising that a conflict of interest or circumstance so prescribed has arisen.
16. 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 preferred personal unavailability are required to give notice of that unavailability, with reasons, to the Commission at the earliest possible opportunity. The Commission will normally endeavour, but may not always be able, to accommodate requests for deferral of an examination.

Attendance

8. These directions are to be read as subject to the Commission's power under section 119(1) of the Act to regulate who may or may not be present at any particular public examination or part thereof.
9. Ordinarily, witnesses will be required not to be present during the examination of any other witness, however they will be able to have access to all publically available transcripts and exhibits.

Directions hearings

10. The Commission may hold a directions hearing at any stage should the need arise.
11. Directions hearings may be conducted in public or private and on notice to represented or other directly interested parties. Details are also posted on the Commission website.
12. Any parties with a sufficient interest need to seek in writing and obtain leave before they can attend a private directions hearing.
13. Paragraphs 38-39 below apply to all directions hearings.

Conduct of the examinations – witnesses

14. Subject to the control of the Commission, counsel assisting will determine which witnesses are called, and the order in which those witnesses are called and examined. It may be necessary to call some witnesses to give evidence on more than one occasion.
15. Pursuant to section 117(3A) of the Act, the Commission may, on its own motion or on application by a witness or other person authorised under section 119A to appear at the examination, decide to hold any part of a public examination in private. In making this decision the Commission may have regard to:
 - (a) whether it is in the public interest to keep that part of the examination open to the public; and
 - (b) whether holding the examination in private is necessary to prevent unreasonable damage to a person's reputation, safety or wellbeing.
17. All witnesses will be called to give evidence by counsel assisting, and then examined or have their statement attested to and tendered by counsel assisting. If there is more than one counsel assisting the Commission there may be circumstances in which a witness might be examined by more than one of the counsel assisting the Commission.
18. The witness may then be examined by his or her own legal representative. Counsel assisting may re-examine. Duplication and repetition must be avoided.
19. Pursuant to section 132A, a witness may, with leave of the Commission, be cross-examined by another witness, a person authorised under section 119A to appear at the examination or a legal representative of the above persons. A witness being cross-examined pursuant to section 132A has the same protections and is subject to the same liabilities as apply when that witness is examined by counsel assisting the Commission.
20. The Commission will determine the order in which persons granted leave to cross-examine a witness may do so and when that will occur.
21. In determining whether a person has sufficient interest to cross-examine a witness, the Commission may call upon the applicant cross-examiner to:
 - (a) identify the purpose of the cross-examination;
 - (b) set out the issues to be canvassed;
 - (c) state whether contrary affirmative evidence is to be adduced, and if so to provide a signed statement of that evidence.
22. The Commission may:
 - (a) limit the particular topics or issues upon which a person so authorised can examine or cross-examine;
 - (b) impose time limits upon examination or cross examination.
23. Save as set out in the following two paragraphs, the Commission will not apply the rule in *Browne v Dunn* without prior notice.
24. If the Commission is to be invited to disbelieve a witness, the material grounds upon which it is said that the evidence should be disbelieved needs to be put to the witness so that the witness may have an opportunity to offer an explanation.
25. The Commission expects that, where it is contended that deliberately false evidence has been given, or that there has been a mistake on the part of the witness on a significant issue, the grounds of such contention will be put to the witness.

26. What is stated in the foregoing two paragraphs is not intended to mean that:
- (a) mere inconsistencies and unimportant differences in the evidence should be raised;
 - (b) once the grounds for disbelieving a witness have been put by or on behalf of one person, other persons need to put them again;
 - (c) the grounds for disbelieving a witness need to be put where the Commission is on notice from statements made during the public examinations by or on behalf of a person, or that person's evidence, or from the general way in which the person has conducted its previous questioning, or some similar source, that the witness's evidence is under challenge on those grounds.
27. 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.
28. Any person wishing to have evidence of a witness or witnesses adduced before public examinations must notify the Commission of the name of the witness, and provide a signed statement containing their expected evidence. Commission staff may interview the witness, and take further statements if necessary. Counsel assisting will decide whether or not to call the witness. An application may be made directly to the person presiding to call the witness only after the above procedure has been completed, and counsel assisting has declined to call the witness.

Conduct of the examinations - documents

29. Subject to the control of the Commission, counsel assisting will determine which documents are tendered, and the time at which they will be tendered.
30. 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 and in all cases prior to its intended use.
31. Prior to the commencement of public examinations, the Commission may provide in confidence to those persons it considers to be substantially and directly interested in the subject matter of public examinations with certain documents likely to be tendered as exhibits. This will be done on a case by case basis. As a general rule, the Commission will not otherwise make documents or other material available in advance of public examinations.
32. Copies of these documents will not necessarily be provided to any other person. Additional documents may be tendered by counsel assisting during the course of public examinations. See otherwise paragraph 41(b) below.

33. Any person wishing to have a document tendered at any public examination 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 on notice may be made directly to the person presiding to tender a document only after the above procedure has been completed, and counsel assisting has refused to tender the document.

Secrecy or privilege claims

34. Section 146 of the Act prescribes a procedure for secrecy or privilege claims.
35. Parties granted confidential access to any documents should notify the Commission lawyer with carriage of the matter of any secrecy or privilege claim 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 the subject of the claim and any public interest grounds relevant to the claim.
36. The person presiding will determine whether or not to hear oral submissions in support of such claims and whether to give notice to other potentially interested parties.
37. An applicant for such a claim will be advised once the application has been determined.

Substantive applications

38. Substantive applications made to the Commission, other than ones provided for in these directions, shall be first made in writing and supplied to the designated solicitor to the Commission. Such applications must include, and will be taken to include, all that is wished to be submitted and all evidence or other material intended to be relied upon. The applicant will be offered the opportunity to make a written reply should written submissions be sought from Counsel Assisting.
39. The person presiding will decide whether or not to hear oral submissions in support of such written application, or to invite further written submissions, before determining it and giving notice thereof. The Commission will decide the degree to which submissions and the outcome of any applications are to be made available to third parties or otherwise published.

Publication of, and access to, evidence

40. Pursuant to section 129A, the Commission may issue a suppression order prohibiting or restricting the publication of any information or evidence given in a public examination if the Commission considers it necessary.
41. In respect of all evidence, oral and documentary, the following directions will apply until vacated either generally or in respect of particular evidence:
- (a) the testimony of any witness before the Commission may be published;
 - (b) any person (or the legal representative of that person) appearing 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 condition 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 designated solicitor to the Commission.

Concluding submissions

42. Unless otherwise directed, at the conclusion of the evidence, oral submissions will not be allowed, but directions may be made for written submissions. The Commission may limit the particular topics or issues which may be addressed, and impose time or page limits for submissions.
43. Ordinarily, such directions will require counsel assisting to provide written submissions within 14 days of the close of evidence and all other interested persons to provide their written submissions 14 days thereafter with Counsel Assisting having a seven day right of reply. Written submissions may be published at the Commission's discretion.

Liaison with the Commission

44. Any contact with the Commission made necessary by these directions, or other enquiries in respect of the conduct of public examinations in an investigation, should be made through the designated solicitor to the Commission with carriage of the relevant investigation to which the public examinations relate (details ordinarily being available on the Commission website).

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- investigating serious corruption and police misconduct
- informing the public sector, police and the community about the risks and impacts of corruption and police misconduct, and ways in which it can be prevented.

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