



# 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 may be held in circumstances prescribed in section 117 of the *Independent Broad-based Anti-corruption Commission Act 2011* (the Act).

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 modification in relation to particular examinations.

## Sitting times

1. Usual hearing hours will be from 10 am to 4 pm weekdays, 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](http://www.ibac.vic.gov.au)

## Appearance and representation

3. Those persons ordinarily entitled to appear at a public examination are persons attending in accordance with a witness summons and Australian legal practitioners representing a person who is attending in accordance with a witness summons
4. In accordance with section 119A of the Act, the Commission may also 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. Any application by an interested person, together with any supporting material, should be made in writing to the Commission prior to the commencement of the public examination.
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.

## Attendance

7. 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.
8. 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 publicly available transcripts and exhibits.

## Conduct of the examinations – witnesses

9. 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.
10. 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.
11. 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.
12. All witnesses will be called to give evidence by counsel assisting, and then examined by counsel assisting.
13. The witness may then be examined by his or her own legal representative. Counsel assisting may re-examine. Duplication and repetition must be avoided.
14. 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 those persons. An application for cross examination, together with any supporting material, must be made in writing to the Commission prior to the relevant witness being excused from further attendance under their summons. A witness being cross-examined pursuant to section 132A has the same protections and is subject to the same liabilities as when that witness is examined by counsel assisting the Commission.

15. The Commission will determine the order in which persons granted leave to cross-examine a witness may do so and when that will occur.
16. 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.
17. 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.
18. 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.

## Conduct of the examinations - documents

19. Subject to the control of the Commission, counsel assisting will determine which documents are tendered, and the time at which they will be tendered. Commission staff will take reasonable steps to ensure that any sensitive or personal information contained within any documents to be shown or broadcast during a public examination is identified and appropriately redacted or otherwise prevented from being publicly broadcast.
20. A copy of any document proposed to be put to a witness during cross examination by another party must be provided to the Commission as soon as possible after a decision is made to so use the document and in all cases prior to its intended use.
21. As a general rule, the Commission will not make documents or other material available in advance of public examinations.

## Secrecy or privilege claims

22. Section 146 of the Act prescribes a procedure for secrecy or privilege claims.
23. Parties should notify the Commission lawyer with carriage of the matter of any secrecy or privilege claim in relation to any document to be produced or evidence to be given. Such notification is to be in writing and must be made as soon as practicable. The application should clearly identify the basis the claim and any public interest grounds relevant to the claim.
24. Any person making such a claim will be advised once the claim has been considered and whether the claim is accepted or the matter is to be referred to the Supreme Court of Victoria for determination pursuant to section 148 of the Act.

## Publication of, and access to, evidence

25. Prior to giving evidence in a public examination, witnesses and their legal representatives will be given a short explanation of the process for ensuring non-publication of exhibits which may include sensitive or personal information.
26. 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.
27. Should the Examination be publicly streamed, any such streaming will occur on a delay of approximately 15 to 30 minutes to ensure any sensitive material given in evidence will be not be publicly broadcast.
28. The Commission will also make every effort to ensure sensitive or personal information of witnesses is not publicly broadcast, including by the redaction of such information from transcripts and exhibits.
29. 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.

## Concluding submissions

30. 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. Written submissions may be published at the Commission's discretion.
31. Should IBAC elect to publish a special report pursuant to section 162 of the IBAC Act in relation to any matter canvassed during a public examination, before IBAC can include any comment or an opinion in a special report which is adverse to any person we must first provide the person a reasonable opportunity to respond to the adverse material. Similarly, if IBAC intends to include in a special report a comment or an opinion about any person which is not adverse to the person, IBAC must first provide that person with the relevant material in relation to which the IBAC intends to name that person.

## Liaison with the Commission

32. 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 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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