

INDEPENDENT COMMISSION AGAINST CORRUPTION

STANDARD DIRECTIONS FOR PUBLIC INQUIRIES

OCTOBER 2014

The following directions apply to the conduct of a public inquiry by the Independent Commission Against Corruption (the Commission).

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

2. The Commission 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 Commission that the person is substantially and directly interested. Authorisation can be granted subject to conditions.
3. The Commission 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 proceedings of the Commission subject to the Commission's control and to such extent as the Commission considers appropriate.

Legal representation

5. The Commission may authorise a person giving evidence at the public inquiry to be legally represented.
6. The Commission prefers that each person seeking to be legally represented have 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 assure the Commission that no conflict of interest is anticipated;

- 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

7. 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.
8. The Commission may decide to receive the evidence of a witness orally or by statement. The Commission will decide whether to require a witness giving evidence by statement to attend for examination or cross-examination.
9. 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.
10. The Commission will regularly publish on its website a list of witnesses proposed to be called each week of the public inquiry.
11. 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 the Commission there may be circumstances in which the witnesses might be examined by more than one of the counsel assisting the Commission. The witness may then be cross-examined by or on behalf of any person considered by the Commission 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.
12. In determining whether a person has sufficient interest to cross-examine a witness, the Commission may call upon the cross-examiner to:
 - a. Identify the purpose of the cross-examination,
 - b. Set out the issues to be canvassed,
 - c. State whether a contrary affirmative case is to be made, and if so the details of that case.
13. The Commission may:
 - a. Limit the particular topics or issues upon which a party can examine or cross-examine;
 - b. Impose time limits upon examination or cross examination.

14. Save as set out in paragraphs 15 to 18 of these Directions, the Commission will not apply the rule in *Browne v Dunn*.
15. 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 should be put to the witness so that the witness may have an opportunity to offer an explanation.
16. 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.
17. What is stated in paragraphs 15 and 16 above 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 one party, other parties 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 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.
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.
19. Any person wishing to have evidence of a witness or witnesses placed before the public inquiry 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 presiding Commissioner to call the witness only after the above procedure has been completed, and counsel assisting has refused to call the witness.
20. Leave may be granted to any affected person (under s 74(3) of the *Independent Commission Against Corruption Act*) to adduce mitigatory evidence bearing upon the exercise by the Commission of its powers under s 74A(2) of the 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

21. Subject to the control of the Commission, counsel assisting will determine which documents are tendered, and the time at which they will be tendered.
22. A copy of any document proposed to be put to a witness 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.
23. Prior to the commencement of the public inquiry, the Commission may provide those persons it considers to be substantially and directly interested in the subject matter of the public inquiry with confidential electronic access to certain documents likely to be tendered as exhibits in the public inquiry. This will be done on a case by case basis by the Commission. As a general rule, the Commission will not otherwise make documents or other material available in advance of the public inquiry.
24. One of the purposes of providing this access is to enable persons to identify whether any application should be made for a suppression order in relation to any document or any part of a document.
25. Copies of these documents will not otherwise be provided to any party. Additional documents may be tendered by counsel assisting during the course of the public inquiry. Where such additional documents are tendered, the Commission will provide a party with a copy of the relevant document where the party has a significant interest in the issues to which each document relates.
26. 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

27. Suppression orders may be made relating to names and identifying details of persons who have a legitimate need for protection.
28. 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.

29. The presiding Commissioner will determine whether or not to hear oral submissions in support of such written applications.
30. Those making such written applications for suppression orders will be advised once the applications have been determined.

Publication of, and access to, evidence.

31. 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 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 Solicitor to the Commission.

Submissions

32. 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.

33. Unless otherwise ordered, all written submissions are subject to a suppression order under s112 of the *Independent Commission Against Corruption Act* that the submissions not be published or communicated to anyone except the Commission, the parties involved in the public inquiry and their legal representatives, or by Commission officers for statutory purposes or pursuant to further order of the Commission.

Liaison with the Commission

34. 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.