

## INFORMATION FOR WITNESSES

This information brochure is intended for persons who have been summoned to appear before the Commission to give evidence or produce documents or other things, or both.

All section references are to the *Law Enforcement Conduct Commission Act 2016*.

### YOUR SUMMONS — WHAT IT WILL SAY

Your summons will state the date, time and place of the examination. Except in special circumstances, all Commission examinations will take place in the Hearing Room located at Level 3, St James Centre, 111 Elizabeth Street, Sydney NSW 2000.

Your summons will also state whether the examination is to be held in public or in private.

Your summons will state whether information may or may not be disclosed about the summons. If your summons says that you may not disclose any information about it, this includes information about the existence or nature of the summons or of the investigation to which it relates. It also means that you may not disclose any information to a person from which the person could reasonably be expected to infer the existence or the nature of the summons or of the investigation to which it relates. With several exceptions, it is an offence to disclose information in contravention of an order that information not be disclosed.

Even if the summons does contain a statement that information about the summons is not to be disclosed, you may disclose information about the summons in the following circumstances:

- (a) the disclosure is made to an employee, agent or other person in order to obtain information to comply with the summons and the employee, agent or other person is directed by you not to inform the person to whom the information relates about the matter, or
- (b) the disclosure is made to obtain legal advice or representation in relation to the summons, or
- (c) the disclosure is made for the purposes of, or in the course of, legal proceedings, or
- (d) the disclosure is made to a registered medical practitioner or registered psychologist in relation to the provision by that health practitioner of medical or psychiatric care, treatment or counselling (including but not limited to psychological counselling) to a person required by a summons to give evidence, or
- (e) in accordance with guidelines issued by the Commission or in accordance with the regulations.

Should you consider it necessary to discuss this summons with a person not referred to in paragraphs (a) to (e) above, such as your supervisor, employer or medical adviser, you should contact the Commission officer nominated on the front page of this summons.

Your summons will probably contain a statement of the general scope and purpose of the examination.

Your summons will contain the name and telephone number of an officer of the Commission to whom enquiries regarding the summons should be directed.

## YOU MUST COMPLY WITH YOUR SUMMONS

You must appear at the time and date specified on the summons. You must also re-appear before the Commission from day to day, unless you are excused from attendance or until you are released from further attendance by the Commissioner presiding at the examination.

If you fail to attend before the Commission at the time and place named in the summons and you offer no reasonable excuse to the satisfaction of the Commissioner for the failure to attend, you may be arrested and brought before the Commission.

It is possible that you may not be required to attend on the actual date specified. To reduce the inconvenience that the summons may occasion to you, you may wish to contact the officer named on the summons prior to the date specified for you to appear in order to confirm when and on what day your appearance is required. **You must attend** at the date and time specified in this summons unless you are advised not to attend by the relevant Commission officer.

If your summons requires the production of documents or other things, you must bring the documents or things with you when you answer the summons.

## AT THE EXAMINATION

Having appeared at the Commission in answer to your summons, you will be called to the witness box and asked to swear an oath or affirm that the evidence you will give will be the truth. You must either be sworn or make an affirmation. If you refuse, without reasonable excuse, to be sworn or to make an affirmation, you may be guilty of an offence.

The examination will be presided over by the Commissioner or Assistant Commissioner appointed for the purpose of conducting the examination.

After swearing the oath or making an affirmation that you will tell the truth, you will be informed by the examining Commissioner that you may object to giving an answer or producing a document. You are not, however, entitled to refuse to answer any question relevant to the Commission's investigation which is put to you by the Commissioner or other person presiding at the examination. You are also not entitled to refuse to produce any document or other thing in your custody or control that the summons or the examining Commissioner requires you to produce.

You will be informed by the examining Commissioner that if you wish to object to each and every question or demand for production, a declaration may be made that any answer given, or document or other thing produced, by you as a witness at the examination is not admissible in evidence against you in civil or criminal proceedings. This declaration can be made in respect of all or any classes of answers given by you or all or any classes of documents or other things produced by you. If such a declaration is made, then all answers given or documents or other things produced will be regarded as having been given on objection. You will then be asked whether you wish to give any of your answers or produce any documents or other things on objection.

Even if a declaration is made that all answers given, or documents or other things produced, are given on objection, your answers and documents and other things produced may be admissible in the following proceedings and circumstances:

- (a) disciplinary proceedings;
- (b) proceedings for an offence against the *Law Enforcement Conduct Commission Act 2016*;
- (c) proceedings for contempt under the *Law Enforcement Conduct Commission Act 2016*,

- (d) deciding whether to make an order under section 173 (reviewable and non-reviewable disciplinary actions) or 181D (removal for loss of confidence of the Commissioner of Police) of the *Police Act 1990*,
- (e) deciding whether to make an order under section 183A of the *Police Act 1990* (and is admissible in any proceedings under Division 2A of Part 9 of that Act with respect to such an order),
- (f) deciding whether to take action under section 69 or 70 of the *Government Sector Employment Act 2013*, and
- (g) for the purposes of the Director of Public Prosecutions providing advice about the commencement of proceedings against particular persons for criminal offences against laws of the State.

You are not excused from answering any question or producing any document or other thing on the ground that the answer or production may incriminate or tend to incriminate you. You are also not excused from answering any question or producing any document or other thing by seeking to rely on any other ground of privilege or on the ground of a duty of secrecy or other restriction on disclosure, or any other ground. The one exception is where the answer to the question would disclose, or the document or other thing contains, a privileged communication passing between a legal practitioner (in his or her capacity as a legal practitioner) and you where the communication was for the purpose of providing or receiving legal professional services in relation to your appearance, or reasonably anticipated appearance, at an examination before the Commission. Further information about your rights to legal representation is set out below.

In the event that you wish to raise a claim for privilege, the procedures set out below shall apply.

1. Information the subject of the claim should be placed into a sealed envelope and the envelope marked with the words, "Response to Notice No X of 20XX - Claim for Privilege". The documents or other things the subject of the claim should be accompanied by:
  - (a) a list identifying the documents or other things the subject of the claim;
  - (b) a written application that the Summons, or part thereof, be set aside on the ground of privilege, and
  - (c) a statutory declaration made by you in support of the claim for privilege, setting out particulars of the grounds of the claim.
2. The claim shall be determined by the issuing Commissioner (or another Commissioner if the issuing Commissioner is not available). In so far as the claim may be determined without examination of the documents or other things, the Commission undertakes to retain the documents or other things undisturbed in the sealed envelope.
3. If it appears to the Commission that you have a ground of privilege as prescribed in the Act and it does not appear to the Commission that you consent to compliance with the requirement to produce, the documents or other things will be returned without being further inspected by the Commission.
4. If, upon an examination of the information by the Commission, it does not appear to the Commission that you have a ground of privilege and you have not consented to compliance with the requirement to produce, then at the hearing an opportunity will be given for you to be heard as to why the claim for privilege should not be dismissed. You may be legally represented during this process.

## **OFFENCES**

### **Offences By Witnesses**

#### *Failure to Attend Etc*

If you fail, without reasonable excuse,

- (a) to attend before the Commission in accordance with your summons, or
- (b) to be sworn or make an affirmation, or
- (c) to answer any question relevant to an investigation put to you by the Commissioner or person presiding at the examination, or
- (d) to produce any document or other thing in your custody or control that the summons or the person presiding requires you to produce,

you will be guilty of a summary offence, the maximum penalty for which is 20 penalty units (\$2,200 for individuals or \$4,400 for corporations) or imprisonment for 2 years, or both. You will also be in contempt of the Commission. There is no maximum penalty for an offence of contempt.

#### *False or Misleading Evidence*

You will be guilty of an indictable offence if you give evidence at an examination before the Commission that is, to your knowledge, false or misleading in a material particular. The maximum penalty for this offence is 200 penalty units (\$22,000 for individuals or \$44,000 for corporations) or imprisonment for 5 years, or both.

#### *Offences Relating to Documents or Other Things*

A person will be guilty of an indictable offence if, knowing that any document or other thing is or may be required in connection with an investigation, wilfully destroys it or renders it incapable of identification or, in the case of a document, renders it illegible, indecipherable or unusable, with intent to prevent it from being used or connection with the investigation. The maximum penalty is 100 penalty units (\$11,000 for individuals or \$22,000 for corporations) or imprisonment for 2 years, or both.

A person will be guilty of an indictable offence if the person, with intent to delay or obstruct the carrying out by the Commission of an investigation:

- (a) destroys or alters any document or other thing relating to the subject-matter of the investigation, or
- (b) sends or attempts to send, or conspires with any other person to send, out of New South Wales any such document or other thing, or any property of any description belonging to or in the disposition of or under the control of any person whose affairs are the subject-matter of the examination or other investigation.

The maximum penalty for this offence is 200 penalty units (\$22,000 for individuals or \$44,000 for corporations) or imprisonment for 5 years, or both.

A person will be guilty of an indictable offence if the person, with intent to delay or obstruct the carrying out by the Commission of any investigation, or with intent to mislead the Commission, fabricates any document or other thing which is later produced in evidence to the Commission. The maximum penalty for this offence is 200 penalty units (\$22,000 for individuals or \$44,000 for corporations) or imprisonment for 5 years, or both.

## **Offences Against Witnesses**

### *Procuring False Testimony by Witness*

Any person who procures or causes or attempts or conspires to procure or cause the giving of false testimony at an examination before the Commission, or in purported compliance with a notice served on any person under section 54 of the Act, procures or causes or attempts or conspires to procure or cause the furnishing of information that is, to the knowledge of the person so served, false or misleading in a material particular, is guilty of an indictable offence, the maximum penalty for which is 200 penalty units (\$22,000 for individuals or \$44,000 for corporations) or imprisonment for 5 years, or both.

### *Bribery of Witness*

A person who:

- (a) gives, confers or procures, or promises to give or confer, or to procure or attempt to procure, any property or benefit of any kind to, on or for any person, on any agreement or understanding that any person called or to be called as a witness before the Commission will give false testimony or withhold true testimony, or
- (b) attempts by any means to induce a person called or to be called before the Commission to give false testimony or to withhold true testimony, or
- (c) asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or herself, or for any other person, on any agreement or understanding that any person will as a witness before the Commission give false testimony or withhold true testimony,

is guilty of an indictable offence, the maximum penalty for which is 200 penalty units (\$22,000 for individuals or \$44,000 for corporations) or imprisonment for 5 years, or both.

### *Fraud on Witness*

A person who practises any fraud or deceit on, or knowingly makes or exhibits any false statement, representation or writing to, any person called or to be called as a witness before the Commission with intent to affect the testimony of that person as a witness, or any person required to comply with a production requirement with intent to affect that person's compliance with the requirement, is guilty of an indictable offence. The maximum penalty for this offence is 200 penalty units (\$22,000 for individuals or \$44,000 for corporations) or imprisonment for 5 years, or both.

### *Preventing Witness From Attending and Threats to Witnesses*

A person who:

- (a) wilfully prevents or wilfully endeavours to prevent any person who has been summoned to attend as a witness before the Commission from attending as a witness or from producing anything in evidence pursuant to a summons to attend, or
- (b) threatens to do or cause, or does or causes, any injury or detriment to any person intending to influence a person summoned as a witness before the Commission to give false testimony or to withhold true testimony or to not attend as a witness or not produce anything in evidence pursuant to a summons to attend,

is guilty of an indictable offence. The maximum penalty for this offence is 200 penalty units (\$22,000 for individuals or \$44,000 for corporations) or imprisonment for 5 years, or both.

### *Injury to Witness or Person Assisting the Commission*

A person who uses, causes, inflicts or procures any violence, punishment, damage, loss or disadvantage to any person for or on account of:

- (a) his or her assisting the Commission or an examining Commissioner, or
- (b) any evidence given by him or her before an examining Commissioner,

is guilty of an indictable offence. The maximum penalty for this offence is 200 penalty units (\$22,000 for individuals or \$44,000 for corporations) or imprisonment for 5 years, or both.

The reference to a person assisting the Commission includes reference to a person who has appeared, is appearing or is to appear as a witness before the Commission.

### *Dismissal of Witness, or Person Assisting Commission, by Employer*

An employer who dismisses any employee from his or her employment, or prejudices any employee in his or her employment, for or on account of the employee assisting the Commission or an examining Commissioner is guilty of an indictable offence. The maximum penalty for this offence is 200 penalty units (\$22,000 for individuals or \$44,000 for corporations) or imprisonment for 5 years, or both.

The reference to a person assisting the Commission includes reference to a person who has appeared, is appearing or is to appear as a witness before the Commission.

## **YOUR PROTECTION**

If you have appeared, are appearing or are due to appear before the Commission to give evidence or to produce a document or other thing and, because of this, you have concerns for your safety or the safety of any other person or you or another person is being subject to intimidation or harassment, you should notify the Commission immediately. The Commission can make arrangements for your protection and the protection of other persons. In some circumstances, the Commission can also make orders to help facilitate these arrangements.

## **LEGAL REPRESENTATION**

Questions regarding access to free legal advice and representation should be directed to:

Inquests, Inquiries and Representation  
Department of Communities and Justice, Legal  
Level 4 West  
Henry Deane Building  
20 Lee Street  
Sydney NSW 2000

Telephone: (02) 8346 1488  
Facsimile: (02) 8346 1804  
Email: [enquiries\\_generalcounsel@justice.nsw.gov.au](mailto:enquiries_generalcounsel@justice.nsw.gov.au)  
<http://www.justice.nsw.gov.au/lsb/Pages/lsb-about-us.aspx>

Your legal representative does not have an automatic right of appearance at the Commission. However, a legal practitioner who acts for a person giving evidence at the Commission is entitled to make application to legally represent that person at the examination. In most cases, such applications will be granted. The Commission reserves the right to decline an application

for legal representation if such representation is likely to prejudice an investigation, for example, by reason of a conflict of interest.

## **LEGAL AND FINANCIAL ASSISTANCE**

A witness who is appearing or about to appear before the Law Enforcement Conduct Commission may apply to the Attorney General for legal or financial assistance. Legal or financial assistance may be available if the Attorney General considers that:

- (a) there is a prospect of hardship to the witness if the assistance is declined,
- (b) the evidence that the witness is giving or appears likely to give is significant, or
- (c) there are other reasons why it is in the public interest that the assistance should be provided.

Questions regarding applications for legal or financial assistance should be directed to the Office of General Counsel, Department of Justice at the address and telephone number appearing above.

## **PROCEDURES AT EXAMINATIONS**

As a witness, you will be asked questions or asked to produced documents or other things by a legal practitioner assisting the Commission. You may also be asked questions by the person presiding at the examination. Your legal representative does not have an automatic right to ask questions nor tender any evidence on your behalf. In most cases, however, your legal representative will be given an opportunity to ask you questions after Counsel Assisting has completed his or her questions. In some cases, your legal representative may also be entitled to ask questions of other witnesses.

You should be aware that the fact that you have given evidence and been released from your summons does not preclude you from being re-called to give further evidence at such time as the Commission may determine. A further summons will be served upon you should that circumstance arise.

## **TRANSCRIPTS**

The Commission shall keep a transcript of each examination. You or your legal representative, if one has been authorised to appear on your behalf, is entitled to one (1) copy of the transcript of your evidence, if such evidence has been given in public examinations.

You are not automatically entitled to a copy of your evidence if it is given in private. You may, however, have access to the transcript on the Commission's premises. You may make application for a copy of a transcript of your evidence if given in private. It is likely that, if the Commission considers it appropriate to supply a copy of a private transcript, strict conditions will be imposed as to the circumstances in which it can be used and communicated.

## **WITNESS EXPENSES**

As a witness, you are entitled to claim expenses associated with your attendance before the Commission. This entitlement extends to interstate witnesses (*Service and Execution of Process Act 1992* (Cth) sub-section 77(3)). Current rates are available upon request from the contact officer nominated on your summons