

INFORMATION FOR WITNESSES

This brochure is for people 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.

If your summons says that you must not disclose any information about it, this includes information about the existence or nature of the summons or its related investigation. It also means that you must not disclose any information that a person could reasonably be expected to infer the existence or the nature of the summons or its related investigation.

It is an offence to disclose information in contravention of an order that information not be disclosed. You may disclose information about the Notice in circumstances where the disclosure is:

- a. made to another person in order to obtain information to comply with the Notice and the other person is directed not to inform the person to whom the information relates
- b. made to obtain legal advice or representation in relation to the Notice
- c. made for the purposes of, or in the course of, legal proceedings
- d. made to a registered medical practitioner or registered psychologist in relation to the provision of medical or psychiatric care, treatment or counselling (including but not limited to psychological counselling) to a person required by a Notice to produce documents or other things
- e. made in accordance with guidelines issued by the Commission or in accordance with the regulations, or
- f. made to a person who has prior approval from Commission.

If you need to discuss this Notice with a person not referred to in the list, such as your supervisor, employer or medical adviser, you should first contact the Commission officer nominated on the front page of this Notice.

Any enquiries you may have about the summons should be directed to the Commission officer nominated on the summons.

YOU MUST COMPLY WITH YOUR SUMMONS

You must attend at the specified time and date, and continue to attend each day until you are excused by the Presiding Commissioner.

If you fail to attend without a reasonable excuse, you may be arrested and brought before the Commission.

It is possible that you may not be required to attend on the specified date, so you can contact the officer named on the summons to confirm.

If your summons requires you to bring documents or things, you must bring them with you.

AT THE EXAMINATION

When you appear at the Commission, you will be asked to swear an oath or an affirmation that you will tell the truth.

The examination will be presided over by the appointed Commissioner

The examining Commissioner will tell you that you can object to answering questions or producing documents. However, you are not entitled to refuse to answer any question relevant to the Commission's investigation.. 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 What you say or produce cannot be used against you in court. This declaration can cover all or some of your answers or produced documents. 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 with the declaration, your answers and documents and other things produced may still be used in the following 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 cannot refuse to answer a question or produce a document because it may incriminate or tend to incriminate you. You also cannot refuse based on any other privilege or duty of secrecy. The one exception is if the question or document relates to a conversation with your lawyer about your appearance at the examination. Further information about your rights to legal representation is set out below.

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 are worried about your safety or the safety of others because of your appearance at the Commission, 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

Street address: Level 4 South, 93 George Street
PARRAMATTA NSW 2150

Postal address: Locked Bag 5111
PARRAMATTA NSW 2141

Telephone: (02) 8688 0111
Email: Enquiries-DCJLegal@facs.nsw.gov.au
<http://www.lro.justice.nsw.gov.au>

Your lawyer cannot automatically represent you at the Commission, but they can apply to do so. In most cases, this application will be granted. However, the Commission may refuse the application if it 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 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.

During your examination as a witness, a legal practitioner assisting the Commission, or the presiding Commissioner will ask you questions or request documents. Your legal representative does not automatically have the right to ask questions or present evidence on your behalf, but may have the opportunity to ask you questions after Counsel assisting has finished. Your legal representative may also be able to ask other witnesses questions. Keep in mind that even if you have given evidence and had been released from your summons, you may still be asked to give further at a later time. If this happens, you will be served with another summons.

TRANSCRIPTS

The Commission shall keep a transcript of each examination. If you give evidence in public examination, you or your legal representative are entitled to 1 copy of the transcript. However, if your evidence is given in private, you are not automatically entitled to a copy, but you may be able to access it on the Commission's premises and apply for a copy. If a copy is provided, strict conditions may be imposed on its use and sharing.

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