



Information for Witnesses

If you have received a witness summons issued by the Corruption and Crime Commission (the Commission) and you have any queries about your role as a witness, please contact the officer named on the summons, on (08) 9215 4888.

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

Your Summons – what it will say

Your summons states the date, time and place for your attendance. Commission examinations will take place in the Hearing Room located at Level 5, 45 Francis Street, Northbridge, if otherwise you will be notified in the summons as to the place for examination.

You must comply with your Summons

You must attend at the time, date and place specified in the summons. You must also attend before the Commission from day to day thereafter, until you are excused from attendance or until you are released from further attendance by the Commissioner.

If you fail to attend before the Commission at the time, date and place specified in the summons, and you offer no reasonable excuse to the satisfaction of the Commissioner for your failure to attend, a warrant may be issued for your apprehension. In that event, you will be brought immediately before the Commission and detained in custody for this purpose.

It is possible that you may not be required to attend on the date specified. To reduce the inconvenience that the summons may occasion to you, you should contact the Commission officer named on the summons prior to the date specified for you to attend, in order to confirm when and on what day your attendance 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 specified documents or things with you when you answer the summons.

Contact the Corruption and Crime Commission

At the examination

Having attended at the Commission in answer to your summons, you will be called to the witness box and asked to swear an oath or, if you have a conscientious objection to taking an oath, to affirm that the evidence you will give will be the truth. You must either be sworn or make an affirmation. If you refuse to be sworn or to make an affirmation, you may be in contempt of the Commission.

You are not entitled to refuse to answer any question relevant to the Commission's investigation which is put to you by the Commissioner or by Counsel Assisting the Commissioner at the examination. Nor are you entitled to refuse to produce any documents or other things in your custody or control that the summons requires you to produce.

However, a statement made in answer to any question put to you as a witness at the examination is not admissible in evidence against you in criminal proceedings or proceedings for the imposition of a penalty.

Notwithstanding this protection, your answers may be admissible in the following proceedings:

- a. contempt proceedings;
- b. proceedings for an offence against the *Corruption, Crime and Misconduct Act 2003* (the Act); or
- c. disciplinary action.

No privilege except legal professional privilege

You are not excused from answering any question or producing any document or other thing on the ground that:

- a. the answer or production may incriminate or tend to incriminate you;
- b. by seeking to rely on any other ground of privilege;
- c. on the ground of a duty of secrecy or other restriction on disclosure; or
- d. on any other ground,

save and except, where the answer to the question would disclose, or the document or other thing contains, a privileged communication passing between you and a legal practitioner (in his or her capacity as a legal practitioner) and where the communication was for the purpose of providing or receiving legal advice or seeking representation 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.

Legal professional privilege

The Act s 144(1) expressly preserves legal professional privilege. Subsection 144(1) is, however, subject to s 144(2) which says that the privilege does not apply to 'a public authority or public officer in that capacity'.

This means that when appearing at, or producing a record or thing to, the Commission in your capacity as a public officer, neither you nor your agency can claim legal professional privilege as a reason for refusing to comply.

If you are not a public officer and wish to make a claim of legal professional privilege in respect of this Notice, you should seek independent legal advice.

Offences by witnesses

If you wilfully delay, obstruct or otherwise hinder the performance of a function by –

- a. the Commission;
- b. an officer of the Commission;
- c. the Parliamentary Inspector; or
- d. an officer of the Parliamentary Inspector,

then you commit an offence attracting a penalty of imprisonment for three years and a fine of \$60,000.

False testimony

You may be guilty of a crime if, at an examination before the Commission or an inquiry before the Parliamentary Inspector, you give evidence that you know is false or misleading in any material particular.

Offences relating to documents or other things

A person who, knowing that a document or other thing is or may be required by the Commission or the Parliamentary Inspector:

- a. wilfully destroys it; or
- b. renders it illegible or undecipherable or incapable of identification,

with the intention of preventing it from being effectively used in evidence, is guilty of an indictable offence.

Disclosure

Unless permitted under the Act s 167(4), you must not disclose to anyone anything about:

- a. the existence of a notice or summons or any official matter (as defined in the Act s 99) connected with a notice or summons; or
- b. any information about that notice, summons or official matter.

The penalty for a breach of the Act s 167(3) is imprisonment for three years and a fine of \$60,000.

For more information about the effect of the Act s 167, please refer to the attached Statement pursuant to ss 99(6) and 167.

Failure to comply with summons

A person who, without a reasonable excuse, fails to comply with a Summons served on that person under the Act s 96 is in contempt of the Commission.

'Reasonable excuse' means an excuse that would excuse a similar failure by a witness, or a person summoned as a witness, before the Supreme Court except that it does not include as an excuse for failing to comply with a Notice, that -

- a. the production of the documents or other things as required in the Notice might incriminate, or tend to incriminate that person or render that person liable to a penalty, or
- b. the production of the document or other thing would be in breach of an obligation of the person not to disclose information, or not to disclose the existence or contents of the document, whether the obligation arose under an enactment or otherwise.

Furnishing false or misleading information

A person who, in purported compliance with a Notice to produce a statement of information served on the person or some other person, furnishes information knowing it to be false or misleading in a material particular is in contempt of the Commission.

Contempt

Pursuant to the Act s 163, a contempt of the Commission is treated as if it was a contempt of the Supreme Court of Western Australia.

Offences against witnesses

Bribery of witness

A person who:

- a. gives, confers or procures, or promises or offers to give or confer, or to procure or attempt to procure, any property or benefit of any kind to, upon or for any person, upon any agreement or understanding that any person called or to be called as a witness before the Commission or the Parliamentary Inspector shall 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 or the Parliamentary Inspector 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, upon any agreement or understanding that any person shall as a witness before the Commission or the Parliamentary Inspector give false testimony or withhold true testimony,

is guilty of an indictable offence.

Fraud on witness

A person who practices any fraud or deceit on, or knowingly makes or exhibits any false statement, representation, token, or writing to, any person called or to be called as a witness before the

Commission or the Parliamentary Inspector with intent to affect the testimony of that person as a witness is guilty of an offence.

Preventing witness from attending

A person who wilfully prevents or wilfully endeavours to prevent any person who has been summoned to attend as a witness before the Commission or Parliamentary Inspector from attending as a witness or from producing anything in evidence pursuant to a summons to attend is guilty of a crime.

Victimisation

A person who:

- a. prejudices, or threatens to prejudice, the safety or career of another person;
- b. intimidates or harasses, or threatens to intimidate or harass another person; or
- c. does any act that is, or is likely to be, to the detriment of another person, because that other person mentioned in paragraph (a), (b) or (c) or someone else gave evidence to, or helped, the Commission or Parliamentary Inspector in the performance of its, his or her functions is guilty of an indictable offence.

Your protection

If you have attended, are attending or are due to attend before the Commission to give evidence or to produce a document or any 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 subjected 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.

Your welfare

If you have attended, are attending or are due to attend before the Commission to give evidence or to produce a document or any other thing and, because of this, you consider that you need to consult a close family member, medical practitioner, psychologist or psychiatrist, you are at liberty to do so. However, you are not permitted to disclose to them:

- a. anything about the existence of a notice or summons or any official matter (as defined in the Act s 99) connected with a notice or summons; or
- b. any information about that notice, summons or official matter.

If there are special circumstances that support disclosure of restricted matter by you, you may contact the Commission officer listed on the summons to request that the Commissioner vary the non-disclosure notation. You will receive a written notification if your request is granted.

Legal representation

You are entitled to a reasonable opportunity to be legally represented. You may consult with a legal practitioner prior to the examination.

Your legal practitioner 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 represent that person at the examination. In most cases, such applications will be granted unless the legal practitioner is already representing a witness in the segment being considered by the Commissioner. The Commission reserves the right to refuse a particular application for legal representation if that representation is likely to prejudice an investigation, for example, by reason of a conflict of interest.

Legal aid

Public officers and former public officers

The WA Government has established a fund to provide legal assistance for serving and former public officers called as witnesses or served with notices or summonses by the Commission.

To qualify for such legal assistance, the Commission must have requested you attend an interview, served a notice to provide a statement of information, served a notice to provide documents or other things or served a summons to appear to give evidence AND you must be a former or serving public officer.

The grant of assistance is not means-tested.

Representation can be provided by the lawyer of your choice, provided the lawyer is on the Legal Aid WA Corruption and Crime Commission Panel. If you do not have a preference Legal Aid WA will allocate a lawyer from this panel. Information on legal assistance and/or legal representation for serving and former public officers called as witnesses and/or served with notices or summonses by the Commission can be provided by Legal Aid WA Client Services - Assessing - on (08) 9261 6530 and at:

<https://www.legalaid.wa.gov.au/get-legal-help/get-lawyer-run-your-case/corruption-and-crime-commission-investigations>

Application forms are available from Legal Aid WA or can be requested from the Commission.

Procedures at examination

As a witness, you will be asked questions or asked to produce documents or other things by Counsel Assisting the Commission. You may also be asked questions by the Commissioner. Your legal representative does not have an automatic right to ask questions, nor to 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 keeps a transcript of each examination. You or your legal representative, if he or she has been authorised to appear on your behalf, is entitled to one (1) copy of the transcript of your evidence, if that evidence has been given in a public examination.

You are not automatically entitled to a copy of the transcript of your evidence if it were given in a private examination. However, if you require a copy, you may make an application in writing to the Commission. The provision of such a transcript is at the Commission's discretion. The Commission is not required to provide reasons for its decision. 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 fees

Witnesses who attend the Commission are entitled to be paid for the expenses of attendance.

Reimbursement for any actual loss of income may be allowed in some circumstances. Proof of the rate of pay and loss of income will be required in writing from your employer. If you are self-employed you may also be entitled to some payment, if an actual loss of income can be proved. There are limits on the amount which is payable to a witness who incurs such expenses or losses. Refer to Appendix A for further information.

Travel arrangements

If substantial travel will be involved in attending examinations you must contact the Commission as soon as possible after receiving this summons. The Commission will make travel arrangements on your behalf after discussing the matter with you. If travel is not substantial and you use public transport, reimbursement will be made, however receipts should be obtained at all times. An allowance is payable if you travel by private vehicle and you should record the actual number of kilometres driven in order that your claim be assessed. Please contact the Commission before embarking on substantial travel in a private motor vehicle as special arrangements may apply.

Accommodation

If your attendance at an examination involves an overnight stay in a hotel or motel, you should contact the Commission in order that arrangements can be made on your behalf. You will be provided with a reasonable standard of accommodation. Costs for personal items, such as telephone calls and alcohol, will not be met.

Meals

An allowance is paid for expenses reasonably incurred for meals. Receipts should be obtained whenever possible.

Other expenses

Payment of other expenses associated with attending examinations will only be made if approval is obtained in advance from the Commission.

Claims for witness fees and expenses

Claim forms for fees and expenses can be found from pages 10 to 12 of this notice. These claims should be directed to the Commission whose postal address is PO Box 330, Northbridge WA 6865. If you are an employee you must obtain proof of loss of income from your employer. If you are self-employed you must provide evidence of your daily rate and any loss of income.

Statement prohibiting disclosure

The Act s 99(6) provides that, if a notation prohibiting the disclosure of any information about a notice or summons has been included, it must be accompanied by a written statement describing the effect of s 167.

The Act s 167 provides:

167. (1) In this section -
- notation** means a notation made under section 99 on a notice or summons;
 - notice or summons** means a notice or summons containing a notation;
 - official matter** has the meaning given to that term in section 99;
 - restricted matter** means any of the following –
 - (a) the existence of a notice or summons or any information about it;
 - (b) the existence of any official matter connected with a notice or summons or any information about that official matter.
- (2) This section applies to –
- (a) a person who is served with a notice or summons; or
 - (b) a person to whom restricted matter is disclosed in circumstances referred to in subsection (4).
- (3) Subject to subsection (4), a restricted matter must not be disclosed by a person to whom this section applies.
Penalty: Imprisonment for 3 years and a fine of \$60 000.
- (4) A restricted matter may be disclosed –
- (a) in accordance with the circumstances, if any, specified in the notation;
 - (b) to a legal practitioner for the purpose of obtaining legal advice or representation relating to the notice or summons;
 - (c) to a person for the purpose of obtaining legal aid relating to the notice or summons;
 - (d) to an officer or agent of a body corporate by the body corporate or another officer or agent of the body corporate for the purpose of ensuring compliance with the notice or summons;

- (e) by a legal practitioner for the purpose of complying with a legal duty of disclosure arising from his or her professional relationship with a client;
 - (f) by a legal practitioner referred to in paragraph (b) for the purpose of giving legal advice, making representations, or obtaining legal aid, relating to the notice, summons or matter; or
 - (g) by a person referred to in paragraph (c) for the purpose of obtaining legal aid relating to the notice, summons or matter.
- (5) This section ceases to apply if –
 - (a) under section 99(7) the notation ceases to have effect; or
 - (b) a period of 5 years elapses after the issue of the notice or summons.
 - (6) Subsection (5) does not affect the operation of section 151 in relation to a restricted matter.
 - (7) A reference in this section to disclosing the existence of something includes disclosing information from which a person could reasonably be expected to infer its existence.

To: Chief Executive
Corruption and Crime Commission
PO Box 330
NORTHBRIDGE WA 6865

Application for Payment of Witness Expenses

Name: _____

Address: _____

Postcode: _____

Home: _____

Work: _____

Telephone: Mobile: _____

Date/s Appeared: _____

Occupation: _____

Tax File No: _____

Bank details

Name of account holder: _____

Account number: _____

BSB number: _____

Employer details

Name: _____

Address: _____

Postcode: _____

Telephone: Work: _____

Mobile: _____

ABN: _____

Expenses Incurred

Attendance At Hearing		\$
Witness attendance fees (refer to schedule)	Half day	
	Full Day	
Expert witness fees (refer to schedule)		
Interpreter fees (refer to schedule)		
Travel (refer to schedule)		
Total kilometres travelled (both ways) (eg 100km @ 64.5 cents per km = \$64.50)	Fuel	
Parking expenses paid (receipts to be attached)	Parking	
Meals (refer to schedule)		
Receipts to be attached	Breakfast	
	Lunch	
	Dinner	
Overnight Accommodation (refer to schedule)		
Receipts to be attached		
Wages/Salary Lost (refer to schedule)		
Proof from employer to be attached		
Income Lost (Self Employed) (refer to schedule)		
Evidence of income lost – details of calculation and documentary proof to be attached		
Total Claimed		

Signed

Dated:

Schedule

Fees for attendance	
Witness for half-day	10.00
Witness for full day	15.00
Expert Witness	reasonable costs
Interpreter	reasonable costs
Travel fees	
Fuel Consumption	64.5 cents per kilometre
Parking expenses (receipts required)	
Meals fees (receipts required)	
Breakfast	21.20
Lunch	33.20
Dinner	52.20
Overnight accommodation (bed only)	
Maximum per day (receipts required)	reasonable costs
Wages/Salary or Income Lost	
Evidence of loss of income by written certification of loss from employer	
Evidence of loss income incurred by anyone self employed by Statutory Declaration	