

Crown Law
QUEENSLAND

Giving evidence before a court, tribunal or commission of inquiry

Karen Watson, Rob Hutchings, Alex Vanenn and Nicola Smith

Slide 1

1

Crown Law
QUEENSLAND

Giving evidence before a court or tribunal

- Before you attend court as a witness
- Attendance at court
- Etiquette in the courtroom
- How you address the judge?
- What occurs when you are in the witness box?
- Giving evidence in a Coronial Inquest?
- What to do if you receive a request for information or a direction from the Work Health and Safety Regulator?
- Commissions of Inquiry – giving evidence, Cabinet documents, hearsay and legal advice.
- Indemnity under the *Public Sector Act 2022* and the Queensland Government Indemnity Guideline.

Slide 2

2

Crown Law
QUEENSLAND

Commissions of Inquiry

CCC investigations

QPS investigations

Legal Representation and Giving Evidence

Rob Hutchings

Slide 3

3

Crown Law
QUEENSLAND

Indemnity under the *Public Sector Act 2022* & QLD Government Indemnity Guideline

Protection from Legal Liability

- Public Sector Act 2022 provides public service employees and other particular persons with legal protection from civil liability for engaging in conduct in an official capacity – liability attaches to the State

Indemnity and Legal Assistance


- Public officers are provided with an indemnity when acting in good faith and without gross negligence
- The indemnity is any combination of:
 - undertaking to pay damages
 - payment of reasonable legal costs incurred
 - legal representation.

Slide 4

4


Crown Law
QUEENSLAND

What proceedings does an indemnity cover?




Civil proceedings

*Excludes where State has commenced proceedings against public officer



Criminal proceedings



Inquiries / investigations

*Excludes internal departmental investigations

Slide 5

5

Crown Law
QUEENSLAND

Giving evidence in Commissions of Inquiry

- Hearings are inquisitorial – rules of evidence don't apply – e.g. hearsay and otherwise objectionable questioning is commonplace
- Object is to get to the truth – not establish guilt/innocence or apportion legal liability
- Power to summon witnesses and require production of documents
- As a public servant, you are required to obey summons and give evidence truthfully.

continues

Slide 6

6

Giving evidence in Commissions of Inquiry

- As a witness you are entitled to receive procedural fairness and your human rights must be respected
- You will be legally represented
- Evidence is given under oath/affirmation – penalties for contempt
- Must answer questions even if incriminatory – but use immunity applies – your answers cannot be used against you, only others
- Inquiry findings are an opinion and recommendations are not binding.

Slide 7

7

Giving evidence before the CCC

- General
 - Standing Commission of Inquiry – Serious Crime, Corruption, Police oversight and Proceeds of Crime
 - CCC has broad investigative powers – coercive hearings, telecommunications interception, surveillance powers, controlled operations, witness protection
 - hearings are generally closed unless the CCC orders otherwise

Slide 8

8

CCC Hearing



Image source: Crime and Corruption Commission Queensland, <<https://www.ccc.qld.gov.au/publications-and-news/media/reporting-public-hearings>>

Slide 9

9

Giving evidence before the CCC

- As a witness in the CCC
 - you are compelled to attend
 - you **must** answer questions put to you by the presiding officer **unless** you have a reasonable excuse; you cannot remain silent in response to a question
 - you **must** produce a document or thing when required at a commission hearing under an attendance notice or s 75B notice **unless** you have a reasonable excuse.

Slide 10

10

Tips for giving evidence

- Prepare, prepare, prepare
- Turn your phone off
- Direct your answer to the presiding officer
- It's OK to clarify a question
- Take your time and speak slowly and clearly
- Assume nothing, just answer the question
- Expect to be cross-examined
- Stay calm
- Stay within your recollection of the facts.

Slide 11

11

Section 197 of the *Crime and Corruption Act 2001* (CC Act)

- Applies if:
 - a person is required to answer a question or produce a document or thing; and
 - before answering the question or producing the document or thing, the person claims self-incrimination privilege; and
 - apart from the CC Act, the individual would not be required to answer the question or produce the document or thing where self-incrimination privilege is raised.

If applies = answer, document, thing produced is **not admissible** in evidence against you in any civil, criminal or administrative proceeding.

Slide 12

12

But ...

Answer, document, or thing produced *can* be admissible in other proceedings:

- With your consent; or
- If the proceeding is about a false or misleading answer you have given or you are in contempt.



Image source: QLS Proctor, <<https://www.qlsproctor.com.au/2023/09/10-things-to-note-about-privilege-against-self-incrimination/>>

Slide 13

13

Requirement to assist QPS with an investigation

- QPS may ask you to assist eg industrial accidents
- Criminal interview vs voluntary interview
- No need for indemnity or legal assistance when assisting police with factual information
- Public Sector *Code of Conduct* forms part of terms of employment
- Code of Conduct requires that public sector officers answer any questions properly asked of you and produce material where it is legal and appropriate to do so to assist an investigation
- If there is any risk of incriminating yourself you will likely be represented by a private legal firm.

Slide 14

14

Coroners Court and Work Health Safety Prosecutions

Alex Vanenn

Slide 15

15

Coroners Court background

- Some overlap with Magistrates Court
- Coroners divided into separate regions
- Hierarchy of Coroners.

Slide 16

16

Coroners Court purpose

- Not a criminal or civil trial
- Examines a death
- Will try to establish the circumstances
- Can also make recommendations.

Slide 17

17

Coroners Court reportable deaths

- Don't know who the deceased person is
- Death was violent or unnatural
- Death happened in suspicious circumstances
- Death was health care related
- Cause of death is unknown
- Death was in care
- Death in custody
- Death in course of police operations.

Slide 18

18

Coroners Court investigation

- Investigation does not necessarily result in inquest
- Will investigate reportable deaths
- Does have power to require documents or information
- Coroner often conclude investigation with written findings.

Slide 19

19

Coroners Court inquests

- Sometimes an inquest *must* be held
- Otherwise, discretion to hold inquest if in public interest
- Department can have a right to appear.

Slide 20

20

Coroners Court inquests

- Will usually have a pre-inquest conference
- A brief of evidence will be released to those appearing at the inquest
- Inquests can be short or go for weeks (or months)
- Always tell the truth.

Slide 21

21

Crown Law
QUEENSLAND

Work Health Safety prosecutions background

- Objective includes protecting workers, and other persons, against harm to health, safety, and welfare
- Binds the State:
 - Division 4 Application of Act**
 - 10 Act binds all persons**
 - (1) This Act binds all persons including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.
 - (2) The State, the Commonwealth and the other States are liable for an offence against this Act.
 - (3) Without limiting subsection (1), the State, the Commonwealth and the other States are liable for a contravention of a WHS civil penalty provision.

Slide 22

22

Crown Law
QUEENSLAND

Work Health Safety prosecutions interviews

- Inspectors can require documents and information
- You can have a representative with you in an interview
- Have to answer questions even if it incriminates you
- Tell the truth.

Slide 23

23

Crown Law
QUEENSLAND

Giving evidence in the Industrial Relations Commission

Nicola Smith

Slide 24

24

Being a witness before the QIRC

- There are generally two types of witnesses in matters before the Queensland Industrial Relations Commission
 - People who observed the incident or conduct that resulted in a person’s dismissal
 - The person or persons who found the conduct warranted dismissal
- Both are important, and the rules of giving evidence apply to every witness. However, I will focus on decision makers today.

Slide 25

25

What makes a good witness before the Commission

- Being a good witness is the same as being a good decision maker. A good witness and a good decision maker is:
 - Considerate and thoughtful
 - Aware of the importance of their decision – and gives the decision adequate and appropriate time
 - Honest and transparent
 - Considers the impact of human rights on their decision
- You cannot fix poor decision making in the witness box.

Slide 26

26

Golden rules for giving evidence

1. Stay calm
2. Take your time
3. Tell the truth
4. In cross-examination, answer as honestly and as succinctly as possible
4. Don't guess
5. Don't fill the silence.

Slide 27

27

Example questions you expect at a hearing

- What material did you consider when making your decision?
- Why did you prefer Employee X's evidence over Employee Y's evidence?
- Did you consider Employee X's explanation for the conduct?
- Why did you decide the conduct was misconduct and not a breach of the Code of Conduct?
- What do you understand misconduct to mean?
- Why did you decide to dismiss Employee X and not impose some other discipline action?

Slide 28

28

A good witness:

- Prepares – they read ALL the material at the time of making their decision, and re-read ALL the material before giving evidence
- Listens – they listen to the advice given in preparing for the hearing and listen to the question asked for them
- Understands their role is to help the Commission.

A bad witness:

- Did not take the time when making their decision
- Doesn't prepare
- Doesn't listen
- Gets frustrated, impatient, sarcastic
- Makes up their answer or guesses what they think the answer should be
- Worries about how or where the matter is going.

Slide 29

29

Questions?

Slide 30

30
