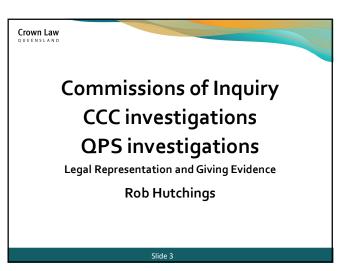
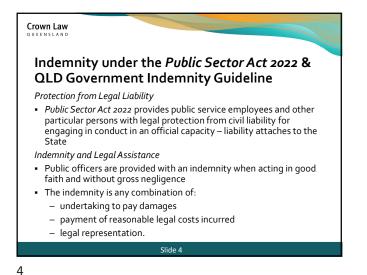


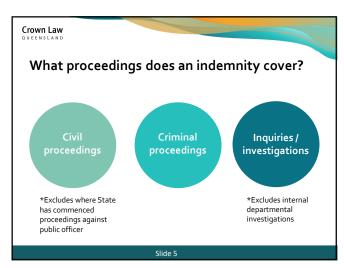
Giving evidence before a court or tribunal

- 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







Crown Law

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.

Slide 6

continues

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.

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Crown Law

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



Giving evidence before the CCC

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

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Crown Law

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.

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Crown Law

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

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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.

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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.



Slide 13

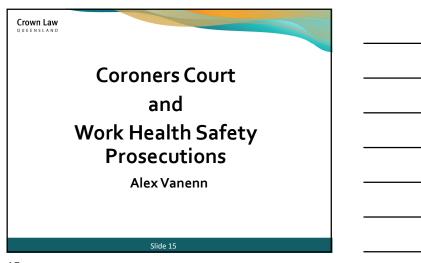
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Crown Law

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





Crown Law

Coroners Court purpose

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

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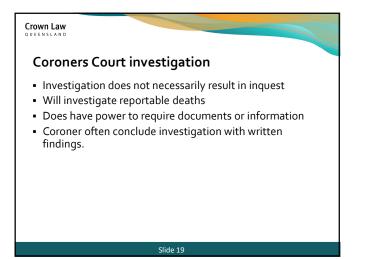
Crown Law

Coroners Court reportable deaths

- Don't know who the deceased person is
- Death was violent or unnatural
- Death happened in suspicious circumstances

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- Death was health care related
- Cause of death is unknown
- Death was in care
- Death in custody
- Death in course of police operations.



Crown Law

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.

Crown Law

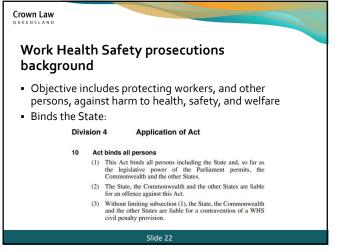
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Coroners Court inquests

- Will usually have a pre-inquest conference
- A brief of evidence will be released to those appearing at the inquest

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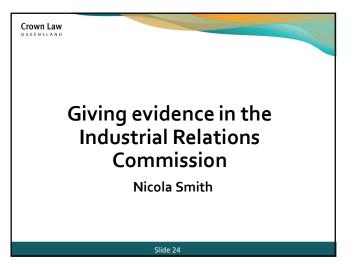
- Inquests can be short or go for weeks (or months)
- Always tell the truth.



Crown Law

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.



Crown Law Definition of the set of the set

Crown Law

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.
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Crown Law

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

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- succinctly as possible
- 4. Don't guess
- 5. Don't fill the silence.

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?

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Crown Law

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 • Makes up their answer or 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
 - guesses what they think the answer should be
 - Worries about how or where the matter is going.

