



# Information for witnesses

## Private hearings

The National Anti-Corruption Commission (the Commission) conducts investigations into questions of corrupt conduct involving public officials.

The Commission's functions and powers are set out in the *National Anti-Corruption Commission Act 2022* (Cth) (the Act). The Commission can conduct hearings as part of an investigation.

The summons you have received requires you to appear before the National Anti-Corruption Commissioner (the Commissioner) at a hearing as a witness, and to give evidence relevant to an investigation.

The summons sets out:

- when you are required to appear
- where you are required to appear, and
- what the hearing is about including the general topics about which you are likely to be questioned.

If for any reason you consider that you are not able to comply with the summons, you must notify the Commission by contacting the officer specified in your summons as soon as practicable, providing reasons, to enable your request to be considered.

## Non-disclosure notations

The summons may include a non-disclosure notation. If the summons includes a non-disclosure notation, you cannot tell anyone anything about the summons, including:

- that you have been summoned to appear at a hearing
- when or where the hearing is to be held, or
- anything about what the hearing is about.

It is an offence to contravene a non-disclosure notation, which carries a maximum penalty imprisonment for 5 years.

There are 4 main exceptions to this. You may disclose information about the summons:

- to a legal practitioner, for the purpose of obtaining legal advice or representation in relation to the notice or the summons
- to a legal aid officer<sup>1</sup> for the purpose of seeking assistance in relation to:
  - the notice or summons, or
  - any other matter arising under, or in relation to, the Act
- to a medical practitioner or psychologist for the purpose of obtaining medical or psychiatric care, treatment, or counselling (including psychological counselling), and
- in any other circumstances specifically referred to in the non-disclosure notation.

The last exception recognises that further exceptions may be appropriate in individual circumstances. You should contact the officer specified in your summons if you have a need to disclose in other situations. These requests will be considered by the Commission, although they cannot always be granted.

## **Leave from work**

If you are concerned about how to take leave from work to attend a hearing, including given any non-disclosure notation, please call the officer specified in your summons. They will assist you to find a solution.

## **Support for witnesses**

The Commission understands that being summoned to attend a hearing may cause stress or worry.

The Commission has engaged Converge International to provide you with witness support counselling sessions. You can access up to 6 counselling sessions with a senior Converge Consultant via telephone or videoconferencing.

For details on how you can access them, please refer to the Service Overview attached to the covering letter of your summons.

On-site witness support may be available on the day of the hearing. If you would like this support, please contact the officer specified in your summons.

If you require urgent/after-hours support, you can contact the main Converge phonenumber on 1300 687 327.

You may also find it helpful to engage a support service of your choosing to provide counselling. There are many such services, including Lifeline Australia. Lifeline Australia is a non-profit organisation that provides free 24-hour crisis support. They can be contacted by calling 13 11 14 and they also have several resources.

## **Expenses**

Depending on how far you are required to travel for the hearing, the Commission may pay your travel expenses. If you wish to claim expenses, contact the officer specified in your summons, including in advance of arranging or booking any travel.

## Legal representation

You are entitled to be represented by a legal practitioner at the hearing. Your legal practitioner should notify the Commission prior to the hearing that they will be attending the hearing as your legal representative. This notification should be sent to the officer specified in your summons.

A person who is summoned to attend a hearing may apply to the Attorney-General for financial assistance in respect of the person's representation at the hearing by a legal practitioner.<sup>2</sup> Information about how to make an application for financial assistance can be found on the website of the Attorney-General's Department.

## What happens at a hearing

At the hearing you will be asked questions and may be ordered to produce documents or things. You may be asked questions in relation to any aspect of any corruption investigation, even if it is not referred to in the summons. Where you are asked to produce documents or things, you may be required to produce them during the hearing or be given a timeframe for producing them.

You must answer all questions or produce any document or thing as ordered at the hearing. It is an offence to fail to do so.

You cannot refuse to answer questions or produce documents or information on the ground of self-incrimination, but the information you provide cannot be used in evidence against you in a prosecution. This will be further explained at the hearing.

You are not excused from giving an answer or information, or producing a document or thing, as required on the ground that doing so would disclose legal advice or a communication protected by legal professional privilege, other than in relation to advice or a communication that concerns a direction to produce, a notice to produce, or your attendance at a hearing.

Where you would otherwise seek to claim privilege against self-incrimination or legal professional privilege, this can be stated and it will be noted for the record.

## Non-disclosure directions

At the conclusion of a hearing, the Commissioner may issue a non-disclosure direction in relation to information about the hearing and information given in the hearing.<sup>3</sup>

Examples include:

- particular information or evidence given by a person at a hearing
- the identity of individuals referred to in the hearing
- a document or thing produced by a person at a hearing, or
- the fact that a particular person has given or may be able to give evidence at a hearing.

It is an offence to disclose information contrary to a non-disclosure direction. This offence carries a maximum penalty of imprisonment for 2 years.

There are 4 main exceptions to this. You may disclose information:

- to a legal practitioner, for the purpose of obtaining legal advice or representation
- to a medical practitioner or psychologist for the purpose of obtaining medical or psychiatric care, treatment, or counselling (including psychological counselling)
- about the summons to a legal aid officer for the purpose of seeking assistance,<sup>4</sup> and
- in any other circumstances specifically referred to in the non-disclosure direction.

## Offences

The Act creates a number of offences that relate to conduct and participation in hearings:

Offence	Legislative reference	Maximum penalty
Failure to attend a hearing in accordance with a summons	s 68	2 years
Failure to give evidence, or produce documents or things	s 69	2 years
Destroying Documents or things	s 70	5 years
Providing false or misleading evidence, information, or documents	s 71	5 years
Obstructing or hindering a NACC staff member in the performance or exercise of their functions, powers, or duties in connection with a hearing	s 72(1)	2 years
Disrupting a hearing	s 72(2)	2 years
Threatening any person present at a hearing	s 72(3)	5 years
Failure to take an oath or make an affirmation to answer a question	s 81	2 years
Failure to comply with a notation	s 98	5 years
Failure to comply with a non-disclosure direction	s 101	2 years
Contempt	s 82	Includes fines and imprisonment

## Notes

1 A 'legal aid officer' means a member of staff of an authority established by or under a law of a State or Territory for purposes that include providing legal assistance, or a person prescribed by Part 3 of the *National Anti-Corruption Commission Regulations 2023*.

2 Part 4 of the *National Anti-Corruption Commission Regulations 2023*.

3 Non-disclosure directions are issued under section 100 of the Act.

4 Refer to the definition of 'legal aid officer' at note 1, above.