

## **Investigative Hearings (CCC/ACC Hearings)**

If you have been served with a Notice requiring your attendance at an investigative hearing, you will need legal advice concerning your position prior to hearing. Investigative hearings are unusual procedures in which witnesses are required to give evidence, usually in private, as part of a particular investigation. They are commonly used by law enforcement agencies such as the Crime and Corruption Commission, and the Australian Crime Commission.

There are a number of unusual features about investigative hearings that mean witnesses appearing before them should be well prepared and provided with legal advice before attending.

### **Practice and Procedure**

Investigative hearings are conducted in rooms that look like court rooms, although are normally held in private with no on-lookers. Other than the witness and his/her lawyer, usually the only people in the room will be the presiding officer hearing the evidence, a "counsel assisting" the investigation who conducts the majority to questioning of the witness, and one or two other administrative staff or investigators.

When your investigative hearing commences, you will be asked to take an oath or affirmation, and then the presiding officer explains to you the particular laws that relate to investigative hearings (much of which is covered in this brochure). After that occurs, counsel assisting the hearing will usually commence questioning you, starting with basic and uncontroversial matters before moving to matters of particular interest. Witnesses can be in the witness box for a matter of minutes, hours or even days. Regular breaks to allow you to confer with your legal representative are usually granted upon request.

The role of your lawyer in the hearing is to ensure that the processes are, as far as possible, fair and in accordance with the law, and to ensure that you are properly protected by way of any claim for privilege that you may wish to make (see below). Your legal representative also has the right to ask questions of you and to lead evidence from you, although this is usually done in a very limited way. That is because the focus of the hearing is not a "contest" as in a courtroom trial, but is simply a means of an investigative agency obtaining information from you. In this way, investigative hearings are more akin to a compulsory interview (on oath) rather than a courtroom trial where there are two parties fighting on equal terms before an independent judge. The "judge" in investigative hearings is not independent, but usually a senior member of the investigative agency.

### **Compulsion**

Under the various laws which govern investigative hearings, the investigating agency can require a witness to answer questions, even if the witness does not want to. This effectively takes away the witness' usual right of silence, and requires them to assist the investigation. The witness in fact commits an offence if s/he refuses to give the evidence or answer questions. Indeed, the witness commits an offence if even refusing to swear on oath or on the bible or affirm that their evidence will be true and correct.

## **The Removal of Self-incrimination Privilege**

Not only are witnesses in investigative hearings required to answer questions, but they must do so even in circumstances where the answers might get them into trouble, i.e. incriminate themselves. In most court cases, a witness who feels that his or her answers may tend to incriminate themselves can refuse to answer specific questions. This privilege does not apply in investigate hearings. The investigating agency can require a witness to answer questions even though the answer would tend to reveal some wrongdoing on the part of witness.

There is a “trade-off” to this extraordinary power however. In circumstances where a witness does not wish to answer questions for fear of getting into trouble, if s/he protests about that in advance and is nonetheless then required to answer the questions, the answers given cannot then be used against the witness in any later proceedings. Whilst investigating agencies may be able to use the information gained from their answers to conduct further enquiries, the answers themselves cannot be used.

To give a practical example:

Witness X is asked about whether he murdered person Y, and if so, where Y's body is buried. Assume that X did indeed murder Y. In those circumstances X is not allowed to refuse to answer the questions, even though so doing would amount to an admission of murder. X can object to answering the question, but after being directed to do so, must then answer. The investigating agency can then use X's answer to conduct further enquiries. For example, they could exhume Y's body from wherever it was buried. Next, they could question other witnesses about the information X has provided and try to build a case against X that way. What they cannot do though is use witness C's admission of murder against him in any proceeding. They can use all of the evidence gathered as a result of his admission, but not his admission itself.

## **Perjury**

There is one significant exception to the “protection” that a witness gets from objecting to answering questions and then being directed to do so. As explained above, in that circumstance the answers of the witness cannot be used directly against them. The exception to this is if the witness is charged with perjury (ie untruthfulness) in their answers at the hearing. If the witness is charged with the criminal offence of lying at the investigative hearing, then the answers given by the witness can be later used in an effort to show that perjury. Perjury is a serious offence, usually involving lengthy jail terms for those found guilty. For this reason, it is absolutely essential that witnesses in investigative hearings tell the complete truth.

## **Confidentiality**

The vast majority of investigative hearings are conducted behind closed doors. Whilst they can be sometimes public, more often than not they are held in secret. Not only are the public and media excluded, but non-publication orders will usually be made which prevent the witness from later revealing any of the questions asked or answers given in the investigative hearing. Sometimes even the Notice requiring a witness' attendance at the hearing is deemed to be confidential, and can only be shown to legal advisors and the like.

The relevant laws governing investigative hearings make it a serious offence for non-publication orders to be breached.

## **Preparing for a Hearing**

It is important before you proceed through a hearing that you obtain detailed advice on your rights, obligations and options. Usually we will be able to liaise with the counsel assisting the inquiry to find out more about what lies in store for you in the investigative hearing. We will also take instructions from you as to your version of events, and assist you in ensuring that you can give your evidence in the most compelling manner possible. If need be, we will ensure that you receive the protection of a claim of privilege before you answer questions.

## **Further information**

Gilshenan & Luton is renowned for its expertise and experience in criminal law and related matters. For further information, feel free to contact:

**Glen Cranny, Principal, on 07 3361 0240 or email [gcranny@gnl.com.au](mailto:gcranny@gnl.com.au)**

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