

# **Guidelines for appearing before and producing documents to Victorian Inquiries**

**November 2025**

## **Acknowledgement of Country**

**The Victorian Government acknowledges Aboriginal and Torres Strait Islander people as the Traditional Custodians of Country.**

We respectfully acknowledge all First Peoples of Victoria and celebrate their enduring connection to land, skies and waters. We thank First People for their care of Country and contributions to Victorian communities. We honour and pay our respects to First Peoples' Elders past and present.

# Contents

|                                                                                                                   |           |
|-------------------------------------------------------------------------------------------------------------------|-----------|
| <b>Part 1: Introduction</b>                                                                                       | <b>4</b>  |
| Overview                                                                                                          | 4         |
| Scope of and application of these guidelines                                                                      | 4         |
| Further information and contacts                                                                                  | 5         |
| <b>Part 2: Types of inquiries and their powers</b>                                                                | <b>6</b>  |
| Parliamentary Committees                                                                                          | 6         |
| What are Parliamentary Committees?                                                                                | 6         |
| Different types of Parliamentary Committees                                                                       | 6         |
| Powers of Parliamentary Committees                                                                                | 7         |
| What are the consequences of failing to comply with a Parliamentary Committee request?                            | 7         |
| Inquiries under the <i>Inquiries Act 2014</i>                                                                     | 7         |
| Royal Commissions                                                                                                 | 7         |
| What is a Royal Commission?                                                                                       | 7         |
| Powers of Royal Commission                                                                                        | 8         |
| What are the consequences of failing to comply with a Royal Commission request?                                   | 8         |
| Boards of Inquiry                                                                                                 | 8         |
| What is a Board of Inquiry?                                                                                       | 8         |
| Powers of Boards of Inquiry                                                                                       | 9         |
| What are the consequences of failing to comply with a Board of Inquiry request?                                   | 9         |
| <b>Part 3: Requests for documents</b>                                                                             | <b>10</b> |
| General information about requests for documents                                                                  | 10        |
| What is a request for documents?                                                                                  | 10        |
| Is there a difference between requests from a Parliamentary Committee and a Royal Commission or Board of Inquiry? | 10        |
| Assessing which documents are relevant to the request                                                             | 10        |
| How do the Model Litigant Guidelines apply to a request for documents?                                            | 10        |
| When to seek legal advice                                                                                         | 11        |
| Redacting documents to protect personal privacy                                                                   | 11        |
| Parliamentary Committee requests for documents                                                                    | 11        |
| Immediate steps following a request from a Parliamentary Committee                                                | 11        |
| Do I have to produce a document if it might incriminate me?                                                       | 12        |
| Can a claim of executive privilege be made over the documents requested?                                          | 12        |
| Approval process for releasing documents that could be subject to executive privilege                             | 13        |
| Approval process for releasing documents when there is no potential claim of executive privilege                  | 13        |
| Royal Commission or Board of Inquiry requests for documents                                                       | 13        |

|                                                                                                                                           |           |
|-------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| Immediate steps following a request from a Royal Commission or Board of Inquiry .....                                                     | 13        |
| Do I have to produce a document if it might incriminate me? .....                                                                         | 14        |
| Can a claim of public interest immunity be made over the documents requested? .....                                                       | 14        |
| Can a claim of public interest immunity be made over the documents requested? .....                                                       | 14        |
| Approval process for claiming public interest immunity or releasing a document that could<br>be subject to public interest immunity ..... | 15        |
| Approval process for releasing documents where there is no potential claim of public interest<br>immunity .....                           | 15        |
| <b>Part 4: Appearing before inquiries.....</b>                                                                                            | <b>16</b> |
| Before your appearance .....                                                                                                              | 16        |
| Do I have to appear? .....                                                                                                                | 16        |
| Immediate steps following a request for attendance .....                                                                                  | 16        |
| Can I make an appearance in a personal capacity? .....                                                                                    | 17        |
| When to consult with Ministers.....                                                                                                       | 18        |
| When to prepare a written statement.....                                                                                                  | 18        |
| When evidence may be given in private .....                                                                                               | 18        |
| Will my evidence be made public? .....                                                                                                    | 19        |
| During your appearance.....                                                                                                               | 19        |
| Conduct and behaviour during an appearance .....                                                                                          | 19        |
| Do I need to provide evidence on oath or affirmation?.....                                                                                | 20        |
| Do I have to answer all questions, and to what extent?.....                                                                               | 21        |
| Dealing with “policy” or opinion questions.....                                                                                           | 21        |
| Evidence that may be subject to executive privilege or public interest immunity .....                                                     | 22        |
| Do I have to answer a question if it might incriminate me?.....                                                                           | 22        |
| Can I be sued or prosecuted for evidence that I have provided? .....                                                                      | 23        |
| When “off the record” evidence may be given .....                                                                                         | 23        |
| Legal representation during your appearance .....                                                                                         | 24        |
| Can I be reimbursed for expenses I incur in giving evidence? .....                                                                        | 24        |
| Appearances before the Bar of a House of Parliament.....                                                                                  | 24        |
| After the hearing .....                                                                                                                   | 25        |
| Reviewing your evidence and making further submissions .....                                                                              | 25        |
| Can a committee request further information after my appearance?.....                                                                     | 25        |
| <b>Appendix A: Executive Privilege .....</b>                                                                                              | <b>26</b> |
| What is executive privilege? .....                                                                                                        | 26        |
| What can a claim of executive privilege be made? .....                                                                                    | 26        |
| Do I have to produce documents or provide evidence that is subject to a claim of executive<br>privilege? .....                            | 26        |
| <b>Appendix B: Further guidance and information.....</b>                                                                                  | <b>27</b> |
| Additional Guidance for Witnesses .....                                                                                                   | 27        |



# Part 1: Introduction

## Overview

### Scope of and application of these guidelines

1. These Guidelines provide guidance to officials when they are required to **appear** before or **produce documents** to **Victorian**:
  - a. Parliamentary Committees
  - b. Royal Commissions
  - c. Boards of Inquiry
2. These Guidelines replace the *Guidelines for Appearing before State Parliamentary Committees* (October 2002).
3. Separate Guidelines are available on the Victorian Government website about:
  - a. [making written submissions and responses to inquiries](#)
  - b. [appearing before Commonwealth Parliamentary Committees](#).
4. These Guidelines are intended to have general application, and apply to all **government bodies**. For the purpose of these Guidelines, a government body is a Victorian public service body, or a public entity that is explicitly subject to ministerial direction or control. Whether a public entity is explicitly subject to ministerial direction or control is usually indicated in the documents creating an entity (e.g. its establishing legislation, or relevant Governor in Council documents). For the purpose of these Guidelines, a government body **does not** include exempt bodies and special bodies (except Victoria Police), such as the Victorian Auditor-General's Office, Independent Broad-based Anti-corruption Commission and Victorian Ombudsman.<sup>1</sup> For the purpose of these Guidelines, Victoria Police **is** considered a government body.
5. If these Guidelines do not apply because a body is exempt, that body is still responsible for appropriately briefing their Minister, public service body Head or a person with functions of a public service body Head on the matter which is the subject of the request. Government bodies are expected to exercise judgment to ensure matters are considered and approved at the appropriate level.
6. For the purpose of these Guidelines, an **inquiry** refers to:
  - a. an inquiry undertaken by a Victorian Parliamentary Committee
  - b. a Royal Commission or Board of Inquiry established under the *Inquiries Act 2014* (Vic).
7. The Guidelines are not intended to apply to regular or periodic requests for information (such as from the Victorian Parliamentary Public Accounts and Estimates Committee, questionnaires or budgetary inquiries). They are also not intended to apply to Formal Reviews established under the *Inquiries Act 2014*, internal government inquiries or reviews established outside of the *Inquiries Act 2014*.

---

<sup>1</sup> Please refer to sections 4-6 of the *Public Administration Act 2004* for definitions of public service bodies, public entities, exempt bodies and special bodies.

## Further information and contacts

8. For further information about these Guidelines, please contact the Office of the General Counsel, Department of Premier and Cabinet (DPC).
9. Additional sources of information are also set out at **Appendix B**.

# Part 2: Types of inquiries and their powers

## Parliamentary Committees

### What are Parliamentary Committees?

- 10. Parliamentary Committees are committees made up of Members of one or both Houses of Parliament. Parliamentary Committees inquire into particular issues and report back to Parliament with findings and recommendations.
- 11. In Victoria, Parliamentary Committees may be established under:
  - a. the *Parliamentary Committees Act 2003* (Vic)
  - b. the Legislative Assembly of Victoria Standing Orders (January 2024)
  - c. the Legislative Council of Victoria Standing Orders (2022)
  - d. the Joint Standing Orders of the Parliament of Victoria.
- 12. The *Parliamentary Committees Act 2003* and the Standing Orders of the Houses of Parliament outline the membership requirements, purposes and powers of the committees.

### Different types of Parliamentary Committees

| Committee type                 | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|--------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Joint Investigatory Committees | <ul style="list-style-type: none"><li>• Made up of members of both Houses</li><li>• Can either be:<ul style="list-style-type: none"><li>◦ Joint House Committees established under <i>Parliamentary Committees Act 2003</i>, which are permanent committees</li><li>◦ Specific Purpose Committees, which are established by a resolution of both Houses of Parliament for a specific purpose and whose functions are time limited.<sup>2</sup></li></ul></li></ul> |
| Standing Committees            | <ul style="list-style-type: none"><li>• Made up of members of one House</li><li>• Appointed at the commencement of each Parliament pursuant to the standing orders of the relevant House<sup>3</sup></li><li>• Government departments are allocated to Standing Committees for Committee oversight</li></ul>                                                                                                                                                       |
| Select Committees              | <ul style="list-style-type: none"><li>• Made up of members of one House</li></ul>                                                                                                                                                                                                                                                                                                                                                                                  |

<sup>2</sup> Joint Standing Orders of the Parliament of Victoria, Joint Standing Order 15.

<sup>3</sup> Legislative Council of Victoria Standing Orders (2022), Standing Order 23.02(1); Legislative Assembly of Victoria Standing Orders (January 2024), Standing Order 202.

| Committee type             | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                            | <ul style="list-style-type: none"> <li>Appointed by a resolution of either House<sup>4</sup></li> <li>Established to inquire into specific issues within specified time frames</li> </ul>                                                                                                                                                                                                                                                                                     |
| <b>Domestic Committees</b> | <ul style="list-style-type: none"> <li>Internal committee of either House, procedures or Parliament's administration (e.g. Privileges (Assembly/Council), Procedure (Council), Standing Orders (Assembly), and Dispute Resolution (Committees))</li> <li>Domestic Committees are concerned with the operation and administration of Parliament and meet privately</li> <li>Domestic Committees usually do not ask for submissions and rarely hold public hearings.</li> </ul> |

## Powers of Parliamentary Committees

13. Parliamentary Committees have the power to request persons, documents and other things.<sup>5</sup>

## What are the consequences of failing to comply with a Parliamentary Committee request?

14. Failure to appear before a committee when summonsed, or to produce requested documents, may be a contempt of Parliament, which is punishable at the discretion of the relevant House.
15. Acts or omissions which obstruct or impede the work of a committee or any of its members or officers may also be treated as a contempt of Parliament.

## Inquiries under the *Inquiries Act 2014*

## Royal Commissions

### What is a Royal Commission?

16. A Royal Commission is an ad hoc advisory body appointed by the Government to obtain information and report on findings about a particular matter. Royal Commissions are often required to make recommendations to the Government.<sup>6</sup>
17. The Governor, on the advice of the Premier, has a power to issue letters patent to establish a Royal Commission.<sup>7</sup> The letters patent define the scope and terms of reference of a Royal Commission and are published in the Government Gazette.

<sup>4</sup> Legislative Assembly of Victoria Standing Orders (January 2024), Standing Order 201; Legislative Council of Victoria Standing Orders (2022), Standing Order 23.02(4).

<sup>5</sup> *Parliamentary Committees Act 2003*, section 28(1); Legislative Assembly of Victoria Standing Orders (January 2024), Standing Order 214; Legislative Council of Victoria Standing Orders (2022), Standing Order 23.16; Joint Standing Orders of the Parliament of Victoria, Joint Standing Order 15(9).

<sup>6</sup> Hallett, L, Royal Commissions and Boards of Inquiry, LBC, 1982, p 1; *Inquiries Act 2014*, section 35(2).

<sup>7</sup> *Inquiries Act 2014*, section 5(1).

18. A Royal Commission may also issue practice directions, statements or notes in relation to its inquiry.<sup>8</sup>
19. Royal Commission appearances are similar to court proceedings. The functions and powers of Royal Commissions are set out in Part 2 of the *Inquiries Act 2014*.

## **Powers of Royal Commission**

20. A Royal Commission has the power to:<sup>9</sup>
  - a. compel a person to attend to produce documents or give evidence
  - b. compel a person to produce documents
  - c. require a witness to give evidence on oath or affirmation
  - d. apply for a warrant to enter and search premises, and take documents or things relevant to the inquiry
  - e. prohibit or restrict the publication of information or evidence
  - f. retain documents for the purpose of its inquiry
  - g. exclude or expel people from its proceedings.

## **What are the consequences of failing to comply with a Royal Commission request?**

21. A witness commits an offence if they:<sup>10</sup>
  - a. do not, without reasonable excuse:
    - i. produce documents or give evidence when required to do so
    - ii. take an oath or make an affirmation when required to do so
    - iii. answer a question when required to do so
  - b. contravene an order:
    - i. excluding a person from inquiry proceedings
    - ii. prohibiting the publication of information or evidence given to the inquiry
  - c. intentionally or recklessly hinder, obstruct, or seriously disrupt proceedings of the inquiry
  - d. knowingly make a false or misleading statement, or provide a false or misleading document, to the inquiry.

## **Boards of Inquiry**

### **What is a Board of Inquiry?**

22. A Board of Inquiry is, like a Royal Commission, an ad hoc advisory body appointed by the Government to obtain information and report on findings about a particular matter.

---

<sup>8</sup> Ibid, section 16.

<sup>9</sup> Ibid, sections 17, 21, 22, 24, 25, 26 and 28.

<sup>10</sup> Ibid, sections 46-50.

23. The Governor in Council, on the recommendation of the Premier, may appoint any one or more persons to constitute a Board of Inquiry to inquire into and report on the terms of reference specified in the order.<sup>11</sup> The order defines the scope and terms of reference of the Board of Inquiry and is published in the Government Gazette.
24. A Board of Inquiry may also issue practice directions, statements or notes in relation to its inquiry.<sup>12</sup>
25. Board of Inquiry appearances are similar to court proceedings. The functions and powers of Boards of Inquiry are set out in Part 3 of the *Inquiries Act 2014*.

### **Powers of Boards of Inquiry**

26. A Board of Inquiry has the same powers as a Royal Commission (see para 20 above), except for the power to issue a warrant to enter and search premises and take documents or things relevant to the inquiry.<sup>13</sup>

### **What are the consequences of failing to comply with a Board of Inquiry request?**

27. The same offences for failing to comply with a Royal Commission (see para 21 above) apply to failing to comply with a Board of Inquiry.<sup>14</sup>

---

<sup>11</sup> Ibid, section 53(1).

<sup>12</sup> Ibid, section 63.

<sup>13</sup> Ibid, sections 64, 68, 69, 71, 72 and 73.

<sup>14</sup> Ibid, sections 86–90.

# Part 3: Requests for documents

## General information about requests for documents

### What is a request for documents?

28. Inquiries often make requests for relevant documents to inform and provide evidence on the matter before the inquiry. These requests are often broad in scope. It is important to review the request as soon as possible after receipt to ensure that:
  - a. you understand the scope of the request, including the amount of time it will take to produce such documents
  - b. you are aware of any privileges, immunities or secrecy provisions that are likely to apply to the request for documents
  - c. you consider whether you will need to seek assistance or input from other departments or branches.
29. It is recommended that government bodies engage with the inquiry at the outset, to foster cooperation throughout the document production process and to ensure timeframes can be met wherever possible.

### Is there a difference between requests from a Parliamentary Committee and a Royal Commission or Board of Inquiry?

30. All inquiries considered in these Guidelines have the power to compel the production of documents relevant to the inquiry.
31. This section (paras 28-44) sets out considerations and procedures of general application to a request for documents by a Victorian inquiry.
32. However, there are also specific considerations and procedures for responding to a request for documents from:
  - a. Parliamentary Committees (paras 46-61)
  - b. Royal Commissions and Boards of Inquiry (paras 64-79).

### Assessing which documents are relevant to the request

33. Documents created after the order or notice is made are **not relevant**.
34. Drafts and duplicates of the same document need not be provided.

### How do the Model Litigant Guidelines apply to a request for documents?

35. Victoria's Model Litigant Guidelines set standards for how the State should behave as a party to legal proceedings. The Model Litigant Guidelines include standards of conduct that should also be followed by government bodies when participating in an inquiry, including when responding to requests for documents.
36. Relevant principles in the Model Litigant Guidelines that should be followed when responding to requests for documents include:
  - a. acting fairly when responding to requests for documents
  - b. dealing with requests promptly and without unnecessary delay
  - c. providing, to the extent practicable in the circumstances, documents to the inquiry in a way that does not unduly increase the inquiry's need for resources.

37. When an inquiry makes a request for the production of documents, government bodies should meet their obligations under the Model Litigant Guidelines by:
- a. engaging early with inquiries to establish expectations, minimise the potential for misunderstandings and foster cooperation throughout the document production process (see further para 45)
  - b. not acting in an inflexible manner in an attempt to frustrate an inquiry's right to access to witnesses or documents
  - c. considering alternative options available to give inquiries the information sought, where documents are subject to a claim of executive privilege or public interest immunity (refer to paras 54-56 and 72-74)
  - d. ensuring timely provision of information to inquiries and communicating with inquiries early on about any potential difficulties in responding within the requested timeframe.
38. Timeframes for responding to requests for documents can be short. A government body should contact the lead department as early as possible to discuss a request for documents. Government bodies should always endeavour to meet the timeframes but can seek to negotiate the timeframes if they honestly believe they will not be able to meet them.

### When to seek legal advice

39. To ensure that potential claims of executive privilege or public interest immunity are not inadvertently waived, missed or misclaimed, Government agencies should always consult with their legal teams when requested or required to produce documents to an inquiry.
40. However, in some cases, it will not be necessary to seek legal advice before releasing or withholding documents.
41. For example, it is not necessary to seek legal advice in respect of documents that are publicly available (e.g. reports published on a government body's website or transcripts of publicly broadcast radio interviews). These documents should be released in response to an order.
42. In contrast, some documents will clearly attract a claim of executive privilege (refer to **Appendix A**) or public interest immunity (refer to WOVG Guidelines for Public Interest Immunity Claims). For example, documents that were prepared for consideration by Cabinet or Cabinet Committees will generally be subject to executive privilege or public interest immunity and should not be released. Where an agency's legal team is satisfied there is a clear claim, it will not be necessary to seek further legal advice in respect of these documents.

### Redacting documents to protect personal privacy

43. Government bodies should ensure that personal or private information (such as the names of non-executive VPS officers and personal contact details of all officers) are redacted from documents proposed for release to inquiries.

## Parliamentary Committee requests for documents

### Immediate steps following a request from a Parliamentary Committee

44. At the commencement of a Parliamentary Committee's inquiry, DPC will nominate a lead department that will be responsible for coordinating the Government's response to requests for documents made by the committee.

45. The Minister or Secretary of the lead department should write to the relevant inquiry, in consultation with DPC's Office of the General Counsel, and:
- a. offer assistance with formulating requests for documents, to ensure any potential issues with the requests are identified early
  - b. note that requests for documents will require government bodies to seek appropriate approvals
  - c. ask that sufficient time is provided to respond, including by suggesting achievable timeframes for responding to requests
  - d. if appropriate, draw the inquiry's attention to publicly available documents that may assist the inquiry, or suggest documents available to the inquiry that would not be subject to a claim of executive privilege.

### Do I have to produce a document if it might incriminate me?

46. While you may request not to produce a document to a Parliamentary Committee on the basis that it might incriminate you, there is no requirement for a Parliamentary Committee to grant such a request.<sup>15</sup> However, there are persuasive arguments to support the view that a Parliamentary Committee should carefully consider such a request, taking into account factors such as the principles of natural justice, merits of the request, significance of the information sought and any alternative means of accessing that information.
47. If you are asked to produce a document that you think may incriminate you, you should request that:
- a. you not be compelled to produce the document on the basis that producing the document may potentially incriminate you, and it would be against the principles of natural justice to compel you to do so
  - b. your evidence be given in private
  - c. you be given an opportunity to seek independent legal advice. You can request this at the outset, or if a request not to produce a document on the grounds of self-incrimination is denied.
48. See further paragraphs 130-131, in respect of a request to answer a question as a witness that might incriminate you.

### Can a claim of executive privilege be made over the documents requested?

49. Executive privilege is a privilege held by the Executive Government. It is similar to public interest immunity, but applies to Parliamentary Committee inquiries (it does not apply to litigation before courts or inquiries established under the *Inquiries Act 2014*).
50. The Government may claim executive privilege in response to a committee request for documents or information when it considers the public interest in withholding the information outweighs the public interest in providing it to the committee.
51. Further information about executive privilege is at **Appendix A**. Government bodies should, at first instance, consult with their legal teams about executive privilege claims and consider the Government's position in respect of making these claims.

---

<sup>15</sup> Neither the *Parliamentary Committees Act 2003* nor the Standing Orders expressly allow a person to refuse to produce documents on the ground that doing so might incriminate the person.

52. Consistent with the Government's commitment to transparency, government bodies should endeavour to redact privileged material from documents, so that the remaining material can be provided to the Parliamentary Committee.

### **Approval process for releasing documents that could be subject to executive privilege**

53. The lead department must seek Cabinet approval where it proposes to claim executive privilege over documents.
54. The lead department should consider what other steps are available to give inquiries the information that they need to operate effectively, particularly where documents are subject to a claim of executive privilege.
55. This includes considering whether sensitive documents may be able to be presented in a way that provides inquiries with the information they need without revealing information that is subject to claims of executive privilege. For example, the lead department should consider whether it is possible to:
- a. make a presentation to the committee that excludes sensitive material
  - b. consider whether, due to the special circumstances, a request could be made to the committee to take evidence about sensitive information in private
  - c. other means that are appropriate in the circumstances.
56. Government bodies should consult with their legal teams to ensure that the above measures do not reveal information over which there is public interest in claiming executive privilege in each particular case.
57. Where departments propose to recommend that executive privilege be claimed over documents, they should detail in their Cabinet submission what other means they have considered to communicate the required information in an alternate form, and if there are no other feasible means of doing so, explain why this is the case.
58. Government bodies should engage with the lead department for further guidance about the Cabinet approval process.

### **Approval process for releasing documents when there is no potential claim of executive privilege**

59. Where a department considers that a document falls within one of the categories of document over which executive privilege could be claimed, but considers that the document should nonetheless be released to the Parliamentary Committee, the department must seek Cabinet approval to release the document.
60. Departments should detail in their Cabinet submissions the reasons why it - considers that it is in the public interest to provide the document to the committee (e.g. transparent and open government, accountability of the Executive Government to Parliament, proper functioning of Parliament) outweighs the public interest in non-disclosure).

## **Royal Commission or Board of Inquiry requests for documents**

### **Immediate steps following a request from a Royal Commission or Board of Inquiry**

61. Where a department considers that no claim of executive privilege can be made over a document, Cabinet approval is not required to approve the production of documents to a committee. However, before a document can be provided to a committee, the responsible Minister must be briefed on and approve the release of the documents.

## Do I have to produce a document if it might incriminate me?

62. At the commencement of a Royal Commission or Board of Inquiry, DPC will nominate a lead department that will be responsible for coordinating the Government's response to requests for documents made by the committee.
63. The lead department will provide guidance on engaging with the inquiry.

## Can a claim of public interest immunity be made over the documents requested?

64. This will depend on the type of inquiry.
65. Boards of Inquiry: No. You may refuse to produce documents to a Board of Inquiry if doing so might incriminate you or make you liable to a penalty.<sup>16</sup>
66. Royal Commissions: No, **but only if** producing the documents might incriminate you or make you liable to a penalty **in relation to proceedings that are in progress and not yet finalised**.<sup>17</sup>
67. If you are asked to produce a document that you think may incriminate you, you should request that:
  - a. you not be compelled to produce the document on the basis that producing the document may potentially incriminate you, and it would be against the principles of natural justice to compel you to do so
  - b. your evidence be given in private
  - c. you be given an opportunity to seek independent legal advice. You can request this at the outset, or if a request not to produce a document on the grounds of self-incrimination is denied.
68. See further paragraphs 127-131, in respect of a request to answer a question as a witness that might incriminate you.

## Can a claim of public interest immunity be made over the documents requested?

69. Public interest immunity is a legal doctrine under which a Court, a Royal Commission or a Board of Inquiry will not order the production or admission into evidence of a document or information, if disclosure of the information would be contrary to the public interest.<sup>18</sup>
70. Further information about public interest immunity is set out in the WOVG Guidelines for Public Interest Immunity Claims. Departments should, at first instance, speak with their legal teams about public interest immunity claims.
71. Consistent with the Government's commitment to transparency, government bodies should endeavour to redact privileged material from documents, so that the remaining material can be provided to the inquiry.

---

<sup>16</sup> *Inquiries Act 2014*, section 65(2)(a).

<sup>17</sup> *Ibid*, section 33.

<sup>18</sup> See *Sankey v Whitlam* (1978) 142 CLR 1, 38-39; *Inquiries Act 2014* sections 18(2)(c) and 65(2)(c).

## **Approval process for claiming public interest immunity or releasing a document that could be subject to public interest immunity**

72. Government will typically develop an authorisation policy covering the release of documents and public interest immunity claims, to assist in the response to an inquiry. Government may also agree a protocol with an inquiry, setting out processes that may include a process for making and determining public interest immunity claims. Information that should be contained in an authorisation policy is set out in the WOVG Guidelines for Public Interest Immunity Claims. Departments must follow the applicable authorisation policy and protocol to make public interest immunity claims or release a document that could be subject to a public interest immunity claim.
73. The lead department should also consider what other steps are available to give inquiries the information that they need to operate effectively, particularly where documents are subject to a claim of public interest immunity.
74. This includes considering whether sensitive documents may be able to be presented in a way that provides inquiries with the information they need without revealing information that is subject to claims of public interest immunity. For example, the lead department should consider whether it is possible to:
  - a. make a presentation to inquiries that excludes sensitive material
  - b. consider whether material can be provided to inquiries on a confidential basis such as subject to an undertaking of confidentiality, agreeing on confidentiality protocols or issuing of non-publication orders under the *Inquiries Act 2014*
  - c. other means that are appropriate in the circumstances.
75. In the event that an inquiry makes a request for documents potentially subject to a public interest immunity claim, and an authorisation policy or protocol has not yet been developed or agreed, the relevant Department should seek legal advice and the approval of Cabinet (or a Cabinet committee with delegated authority) for the making of a public interest immunity claim.

## **Approval process for releasing documents where there is no potential claim of public interest immunity**

76. Subject to the requirements of an applicable authorisation policy, where a department considers that no claim of public interest immunity can be made over a document, the same process used by the department for approving the release of documents to a court or tribunal should be followed. Where the document involves Cabinet material, departments must consult with DPC.

# Part 4: Appearing before inquiries

## Before your appearance

### Do I have to appear?

77. You may be called to appear before a Parliamentary Committee, Royal Commission or Board of Inquiry to provide evidence about the subject matter of an inquiry.
78. Generally, only employees with an employment classification of SES-3 and above should appear. If you are below this classification, you should seek advice from senior officials.
79. You will usually be invited to appear voluntarily. If you do not appear voluntarily, you may be compelled by summons to appear.
80. Requests for an official to appear or to provide material may be made through the relevant Minister (who may delegate this responsibility to the relevant department or agency head).
81. It is not uncommon for officials to be required to appear before a Parliamentary Committee at short notice with, for example, only 2-3 days to prepare. This is ordinarily because the Committee has been asked to report to Parliament in a relatively short time frame and must commence hearings as soon as possible.

### Immediate steps following a request for attendance

82. You should:
  - a. seek advice, comment or direction from senior officials, your agency's internal legal teams, DPC and, if necessary, your government body head
  - b. notify DPC of a proposed appearance
  - c. familiarise yourself with the composition of the committee or appointees of the inquiry and its procedures for witness appearances
  - d. prepare for an appearance by:
    - i. having a clear understanding of relevant Government policy
    - ii. determining the amount of time for which you may be required to appear and, if possible, whether anyone else will be appearing before the inquiry
    - iii. anticipating probable lines of questioning
    - iv. familiarising yourself with these guidelines, particularly in relation to rules concerning when executive privilege or public interest immunity can be claimed
    - v. considering, in the case of a Parliamentary Committee hearing, any interests of the committee members relevant to the inquiry
83. Useful sources of information for appearing before a:
  - a. Parliamentary Committee include the committee's terms of reference, Government submissions to the committee, transcripts of committee hearings, Hansard, and previous committee reports. The committee secretariat may also be able to answer questions you have about committee hearings.

- b. Royal Commission include the Letters Patent establishing the Royal Commission, and any Government submissions to the Royal Commission. Often the Royal Commission will have its own website, which is a further source of useful information.
- c. Board of Inquiry include the Order in Council establishing the Board of Inquiry, and any Government submissions to the Board of Inquiry.

### Can I make an appearance in a personal capacity?

84. You are not restricted from appearing in your personal capacity. However, if you appear in a personal capacity, you should be aware of your obligations under:
- a. the *Constitution Act 1975* (Vic)
  - b. the *Public Administration Act 2004* (Vic)
  - c. the Code of Conduct for Victorian Public Sector Employees 2015 (2015 Code of Conduct)
  - d. your employment contract
  - e. any other legislation or code of conduct that regulates your official functions and duties.
85. If you are considering a personal appearance, you should be aware that comments made to inquiries are likely to become public. Accordingly, you should be aware of the following confidentiality requirements:
- a. clauses 6.2 and 6.3 of the 2015 Code of Conduct, which require public sector employees with access to confidential information to ensure that the information remains confidential
  - b. clause 3.5 of the 2015 Code of Conduct, which requires public sector employees to only make public comments when specifically authorised to do so in relation to their duties, a public sector body, or government policies and programs, and to restrict such comments to factual information only
  - c. section 95 of the *Constitution Act 1975*, which prevents a person employed in the service of the State of Victoria from using information obtained during their employment except in the performance of duties
  - d. any confidentiality requirements that apply under your employment contract
  - e. any legislation that defines your functions, duties or professional obligations, or imposes restrictions on the disclosure of information you have received in your official capacity.
86. If you are appearing before a Royal Commission, you should be aware that section 34 of the *Inquiries Act 2014* overrides other legislation which imposes duties of confidentiality or secrecy. Witnesses can therefore be compelled to provide information to a Royal Commission, despite confidentiality provisions in other legislation. However, section 34 does not apply in certain situations, for example, where the other Act specifically deals with the giving of information to Royal Commissions.
87. If you are a senior official, you should consider the impact, by virtue of your position, of any comment that you might make. Heads of agencies and other senior officials should consider whether it is possible or realistic to appear in a "personal" rather than an "official" capacity (particularly if you are likely to be asked to comment on matters that relate to your responsibilities as an employee). If you make a personal appearance, you should make it clear to the inquiry that your appearance is not in an official capacity.

## When to consult with Ministers

88. Depending on the importance of the inquiry, you should consider consulting with the relevant Minister (including Ministers representing the relevant Minister in the other House of Parliament) prior to your appearance. You should consult with senior officials and/or your government body head to determine whether and how you should consult with the relevant Minister.
89. You should always consult with the relevant Minister/s and DPC if you are considering making a claim of executive privilege or public interest immunity (see paras 49-61 and 69-79).

## When to prepare a written statement

90. It will generally be useful to prepare a written statement on which your oral evidence will be based. You may wish to provide this statement to the Parliamentary Committee, Royal Commission or Board of Inquiry.
91. Written statements should be approved by the appropriate levels within the department and usually by the Minister, in accordance with any arrangements approved by the relevant Minister.
92. You should be aware that all inquiries can compel the production of any written statement or material that you rely on, although it is unusual for inquiries to exercise this power. Materials should be prepared with this possibility in mind.
93. For further information, refer to the Guidelines for Submissions and Responses to Inquiries.

## When evidence may be given in private

94. Parliamentary Committees, Royal Commissions or Boards of Inquiry generally hear evidence in public.<sup>19</sup> However, they can choose to hear evidence in private.<sup>20</sup>
95. A request for a private hearing may be made when:
  - a. a claim of executive privilege or public interest immunity could be justified, but the Minister considers that the balance of the public interest lies in making the relevant information available (see further paras 49-61 and 69-79)
  - b. similar or identical evidence has been previously given in private
  - c. there is another reason for giving evidence in private.
96. If your evidence is sensitive and you would like to give it in private, you should consult with senior officials so that a Minister (or departmental Secretary on the Minister's behalf) can make the request prior to your appearance.
97. If, when giving evidence, you believe that your evidence should be heard privately, you should:
  - a. make a request if the possibility has been foreshadowed with the Minister
  - b. ask to postpone giving the evidence until the Minister can be consulted.

---

<sup>19</sup> *Parliamentary Committees Act 2003*, section 27(1); Legislative Assembly of Victoria Standing Orders (January 2024), Standing Order 214(2); Legislative Council of Victoria Standing Orders (2022), Standing Order 23.16(4).

<sup>20</sup> *Parliamentary Committees Act 2003*, section 28(2), (3); Legislative Assembly of Victoria Standing Orders (January 2024), Standing Order 214(2); Legislative Council of Victoria Standing Orders (2022), Standing Order 23.16(4); *Inquiries Act 2014*, sections 24 and 71.

## Will my evidence be made public?

98. Transcripts of evidence to a Parliamentary Committee, Royal Commission or Board of Inquiry are generally public documents unless declared otherwise. This means that your evidence may be published and/or may be quoted in reports.
99. The particular publication rules applying to different types of Parliamentary Committees are that:
- a. A Joint Investigatory Committee must make a transcript of oral evidence available to a member of the public on request, unless the committee informed the person who gave the evidence that the evidence was received on the basis that it remains private.<sup>21</sup>
  - b. Evidence given to Legislative Council Standing and Select Committees may be published unless the Legislative Council or relevant committee determines otherwise. Evidence that is not taken in public will not be disclosed unless authorised to do so under Legislative Council Standing Order 23.17 or unless the witness has been informed that the evidence is received on the basis that it will be made public.<sup>22</sup>
  - c. Evidence taken by a Legislative Assembly Select Committee in public may be published unless the Legislative Assembly or Select Committee determines otherwise.<sup>23</sup> Evidence that is not taken in public will not be disclosed unless the committee has resolved to so do and the witness has been informed that the evidence is received on the basis that it will be made public.<sup>24</sup>
100. A Royal Commission or Board of Inquiry will publish transcripts of evidence unless it makes an order prohibiting publication. An order prohibiting publication may be made on a number of grounds, including if publication would cause prejudice or hardship to any person, or if the evidence is sensitive.<sup>25</sup>
101. If your evidence is sensitive and you would like it to be kept private, you should request this before your appearance.
102. If the Parliamentary Committee, Royal Commission or Board of Inquiry decides that your evidence will be confidential, you should obtain a written statement confirming this.
103. If the Parliamentary Committee, Royal Commission or Board of Inquiry seeks your permission to publish confidential evidence, you should consult senior officials, your government body head or the Minister.

## During your appearance

### Conduct and behaviour during an appearance

104. When making an appearance before a Parliamentary Committee, Royal Commission or Board of Inquiry, you should:
- a. listen carefully to the question that is asked
  - b. answer carefully and precisely

---

<sup>21</sup> *Parliamentary Committees Act 2003*, section 37.

<sup>22</sup> Legislative Council of Victoria Standing Orders (2022), Standing Order 23.16(3), 23.16(4),(5).

<sup>23</sup> Legislative Assembly of Victoria Standing Orders (January 2024), Standing Order 214(2)(a).

<sup>24</sup> Legislative Assembly of Victoria Standing Orders (January 2024), Standing Order 214(2)(b),(c).

<sup>25</sup> *Inquiries Act 2014*, sections 26 and 73.

- c. be courteous
- d. be cooperative and frank in giving factual information
- e. be measured and patient
- f. only answer questions within your expertise, knowledge or authority – if you do not know the answer to a question, you should say so.

105. You should provide accurate and truthful evidence as:

- a. giving false or misleading evidence to a Parliamentary Committee may constitute a contempt of Parliament for which an individual may be punished
- b. giving false or misleading evidence to a Parliamentary Committee, Royal Commission or Board of Inquiry may constitute grounds for disciplinary action under the 2015 Code of Conduct
- c. serious penalties, including imprisonment, can apply for intentionally providing false or misleading information to a Parliamentary Committee, Royal Commission or Board of Inquiry.<sup>26</sup>

### Do I need to provide evidence on oath or affirmation?

106. A Parliamentary Committee, Royal Commission or Board of Inquiry can choose to have evidence heard before it on oath or affirmation.<sup>27</sup> When a witness is called to the stand, they may be asked to either take an oath on a religious text, or to make a solemn affirmation to tell the truth.

107. A witness before a Royal Commission or Board of Inquiry commits an offence if he/she refuses to be sworn when required.<sup>28</sup>

108. A failure to tell the truth on examination under oath or affirmation may constitute:

- a. a contempt of Parliament (if before a Parliamentary Committee)
- b. a criminal offence punishable by imprisonment (if before a Parliamentary Committee, Royal Commission or Board of Inquiry).<sup>29</sup>

109. Even if you haven't been asked to provide your evidence under oath or affirmation, you should give your evidence as if you had. Being found guilty of a criminal offence punishable by imprisonment constitutes express grounds for termination of any non-executive employee and will typically be grounds for termination of an executive employee.<sup>30</sup> It is also highly likely that a failure to give truthful evidence under oath (even if it does not result in a conviction) may constitute grounds for dismissal of an employee.

---

<sup>26</sup> Legislative Assembly of Victoria Standing Orders (January 2024), Standing Order 200; Legislative Council of Victoria Standing Orders (2022), Standing Order 17.10; *Inquiries Act 2014*, sections 50 and 90.

<sup>27</sup> *Constitution Act 1975*, section 19A(3); *Parliamentary Committees Act 2003*, section 28(4); Legislative Assembly of Victoria Standing Orders (January 2024), Standing Order 214(5); Legislative Council of Victoria Standing Orders (2022), Standing Order 23.16(7); *Inquiries Act 2014*, sections 21 and 68.

<sup>28</sup> *Inquiries Act 2014*, sections 47 and 87.

<sup>29</sup> *Constitution Act 1975*, section 19A(8); *Crimes Act 1958*, section 314.

<sup>30</sup> *Public Administration Act 2004*, section 33(1)(c). Termination of executive employees are dealt with differently under section 34, where the starting point is that the relevant decision-maker may terminate an executive's employment 'for any reason consistent with the terms and conditions of [the executive's] contract of employment'.

## Do I have to answer all questions, and to what extent?

110. You should generally be as open as possible with the Parliamentary Committee, Royal Commission or Board of Inquiry and provide the information sought (consistent with these Guidelines).
111. If you are:
- a. unsure of the facts, or do not have information at hand, you should qualify your answers as necessary (if appropriate, you should give undertakings to provide further information)
  - b. asked questions that fall within the administration of another department or agency, you should request that:
    - i. the questions be directed to that department or agency
    - ii. your answers be deferred until that department or agency has been consulted.
112. You may not be able to provide a Parliamentary Committee, Royal Commission or Board of Inquiry with all the information they seek, or you may need to request restrictions on providing information if the information:
- a. involves matters of policy (see further paras 118-122)
  - b. is subject to public interest immunity or executive privilege (which includes the disclosure of Cabinet-in-confidence material) (see further paras 123-126)
  - c. should be kept confidential (where, for example, giving evidence in private is desirable) (see further paras 97-105).
113. You should also be aware of relevant:
- a. secrecy provisions of Acts
  - b. court orders or sub judice issues.
114. You should seek legal advice if these considerations apply. If these matters emerge during your appearance, and you need to seek legal advice, you should ask the inquiry for an opportunity to seek that advice.

## Dealing with “policy” or opinion questions

115. You should provide factual and background material to a Parliamentary Committee, Royal Commission or Board of Inquiry.
116. Under the 2015 Code of Conduct, you are not expected to answer questions from a Parliamentary Committee that:
- a. seek your personal views on government policy
  - b. seek details of matters considered in relation to ministerial or government decisions, or possible decisions (unless those details have already been made public or the giving of evidence on them has been approved)
  - c. would require a personal judgement on the policies or policy options of the Victorian or other governments.
117. The 2015 Code of Conduct should also be used as a guide when appearing before a Royal Commission or Board of Inquiry.

118. If you are directed to answer questions relating to your views on policy, you should:

- a. advise that you are unable to provide the information sought because it involves an assessment of the merits of the policy
- b. offer to answer questions of fact relating to the policy
- c. defer your answers until you have obtained further advice and/or approval.

119. Agencies that are not bound by the 2015 Code of Conduct may wish to contact DPC for further advice, as these restrictions may not necessarily apply to those agencies.

### Evidence that may be subject to executive privilege or public interest immunity

120. You should not give evidence containing information that may be subject to public interest immunity or executive privilege (see paragraphs 28-42 and 69-76).

121. Decisions to claim public interest immunity or executive privilege are typically made well in advance of a public hearing. It is therefore unlikely that you would be asked a question subject to public interest immunity or executive privilege suddenly in the course of the hearing.

122. However, if you are asked a question and believe that your answer may reveal information subject to public interest immunity or executive privilege, you should:

- a. advise that you are unable to provide an answer because it involves information that may be subject to a claim of public interest immunity or executive privilege
- b. request a postponement of the hearing, or the relevant part of the hearing, until the Minister can be consulted.

123. Before making a claim of public interest immunity or executive privilege, a Minister may explore with a Parliamentary Committee, Royal Commission or Board of Inquiry the possibility of providing the information in a form or under conditions which would not require the claim to be made.

### Do I have to answer a question if it might incriminate me?

124. This will depend on the type of inquiry. Further information is set out below.

125. Boards of Inquiry: No. You may refuse to answer a question if doing so might incriminate you or make you liable to a penalty.<sup>31</sup>

126. Royal Commissions: No, **but only if** doing so might incriminate you or make you liable to a penalty **in relation to proceedings that are in progress and not yet finalised**.<sup>32</sup> See also paragraphs 130-131.

127. Parliamentary Committees: The position is less clear.<sup>33</sup> You may request not to answer a question on the grounds that it might incriminate you. There is no requirement for a Parliamentary Committee to grant such a request, although there are persuasive arguments to support the view that a Parliamentary Committee should carefully consider such a request, taking into

---

<sup>31</sup> *Inquiries Act 2014*, section 65(2)(a).

<sup>32</sup> *Ibid*, section 33.

<sup>33</sup> Neither the *Parliamentary Committees Act 2003* nor the Standing Orders expressly allow a witness appearing before a Parliamentary Committee to refuse to answer a question on the ground that the answer might incriminate the witness (although the Standing Orders do protect evidence produced by a witness to a Committee from being used in other proceedings – see paras 129-131).

account factors such as the principles of natural justice, merits of the request, significance of the information sought and any alternative means of accessing that information.

128. If you are asked a question that you think may incriminate you, you should request that:

- a. you not be compelled to answer the question on the basis that the answer may potentially incriminate you – you may do this by respectfully asking the inquiry to consider your request on that basis that it would be against the principles of natural justice to compel you to answer
- b. your evidence be given in private
- c. you be given an opportunity to seek independent legal advice. You can request this at the outset, or if a request not to answer a question on the grounds of self-incrimination is denied.

129. See further paragraphs 46–48 and 64–68, in respect of a request to produce a document that might incriminate you.

### Can I be sued or prosecuted for evidence that I have provided?

130. Anything said or done by a witness in the course of a Parliamentary Committee's proceedings cannot be used against a person in legal proceedings or a prosecution.<sup>34</sup>

131. Evidence given to a Royal Commission or Board of Inquiry is not admissible in other proceedings against a witness, unless:

- a. the proceedings relate to an offence against the *Inquiries Act 2014*
- b. the proceedings relate to an offence against section 254 (destruction of evidence) or section 314 (perjury) of the *Crimes Act 1958* (Vic) in relation to the Royal Commission or Board of Inquiry
- c. the evidence was or could have been obtained independently of its production to the Royal Commission or Board of Inquiry by the person seeking to use it in the other proceedings.<sup>35</sup>

132. However, you will only be protected from legal action if your evidence is given to a Parliamentary Committee, Royal Commission or Board of Inquiry. As such, you should not repeat your evidence outside the hearing.

### When “off the record” evidence may be given

133. No evidence that you provide is “off the record”. Any evidence you give will form part of the inquiry's records and may expose you or the Government to adverse consequences.<sup>36</sup>

134. In the unlikely event that you are asked to give evidence “off the record”, you should request that the evidence be given on the record. If necessary, you should seek a postponement and consult with the relevant Minister/s.

---

<sup>34</sup> *Constitution Act 1975*, sections 19(1), 19A(7); *Parliamentary Committees Act 2003*, sections 4(1), 50; Legislative Assembly of Victoria Standing Orders (August 2017), Standing Order 196; Legislative Council of Victoria Standing Orders (2017), Standing Order 17.09.

<sup>35</sup> *Inquiries Act 2014*, sections 40(2) and 80(2).

<sup>36</sup> *Parliamentary Committees Act 2003*, section 28(9); Legislative Assembly of Victoria Standing Orders (January 2024), Standing Order 219; Legislative Council of Victoria Standing Orders (2022), Standing Order 23.16(2).

## Legal representation during your appearance

135. A person is not entitled to legal representation at a public hearing of a Joint Investigatory Committee unless both Houses of Parliament resolve otherwise.<sup>37</sup>
136. In relation to Select Committees and Standing Committees, the Standing Orders do not prohibit legal representation. In this case, a witness should seek express permission from the committee to have representation during proceedings.
137. You should not usually need legal representation when appearing before a Parliamentary Committee. You should consult DPC if you believe that you require legal representation when appearing before a Parliamentary Committee.
138. If you receive a request to appear before a Royal Commission or Board of Inquiry, it may allow you to be legally represented.<sup>38</sup> You should seek advice from your relevant legal branch about whether it is appropriate for you to be legally represented when appearing before a Royal Commission or Board of Inquiry.

## Can I be reimbursed for expenses I incur in giving evidence?

139. It will depend on the type of inquiry.
140. Parliamentary Committees: No regulations regarding witness expenses have been made under the *Parliamentary Committees Act 2003*.<sup>39</sup> The Standing Orders do not make provision for reimbursement of expenses in relation to Standing Committees or Select Committees. If a witness wishes to claim for expenses for appearing before a committee, the matter should be discussed with senior officials. If warranted, a formal written request should be made to the committee for reimbursement of the expenses.
141. Royal Commissions or Boards of Inquiry: Regulations regarding witness expenses have been made under the *Inquiries Act 2014*.<sup>40</sup> These regulations allow witnesses attending an inquiry at the request of a Royal Commission or Board of Inquiry to claim expenses relating to loss of income, caring responsibilities, meals, accommodation and travel in accordance with prescribed scales.

## Appearances before the Bar of a House of Parliament

142. In both Houses of Parliament in Victoria, the main entrance to each House can be “barred” by the lowering of a heavy rail. This “Bar” of the House is a point outside which no Member may speak to the House or over which no “stranger” (people who are not Members of Parliament) may cross and enter the Chamber unless invited by the House. Historically, the Bar is the place to which persons are brought so that the Speaker may address them on behalf of the House, or at which persons are orally examined.
143. Both the Legislative Assembly and the Legislative Council can summon witnesses to be examined at the Bar of the House.<sup>41</sup>

---

<sup>37</sup> *Parliamentary Committees Act 2003*, section 27(3).

<sup>38</sup> *Inquiries Act 2014*, sections 15(1)(b) and 62(1)(b).

<sup>39</sup> *Parliamentary Committees Act 2003*, section 28(7).

<sup>40</sup> *Inquiries Regulations 2015*.

<sup>41</sup> Legislative Assembly Standing Orders (January 2024), Standing Order 190; Legislative Council of Victoria Standing Orders (2022), Standing Order 17.04.

144. It would be only in exceptional circumstances that an official would be summoned to the Bar of a House of the Parliament and each case would need individual consideration. In addition to following these Guidelines, such a case would require specific guidance, depending on the particular circumstances.

## **After the hearing**

### **Reviewing your evidence and making further submissions**

145. You will be provided with a proof copy of your evidence. You should carefully review this for accuracy. You should bring any inaccuracies to the attention of the Parliamentary Committee, Royal Commission or Board of Inquiry and request that it be corrected.

146. You will not be permitted to alter the substance of your evidence.

147. In some cases, it may be necessary to make a further appearance or submission. If relevant evidence has not been provided, you should consult with senior officials, your department/agency head, and/or the Minister about a further appearance or submission.

### **Can a committee request further information after my appearance?**

148. Following your appearance, a Parliamentary Committee, Royal Commission or Board of Inquiry may request further information or written answers to questions that were posed during a hearing. If a request is made, you should follow the processes in the [Guidelines for Submissions and Responses to Inquiries](#) or, if the request does not fall within the scope of existing guidelines, consult with the lead Department regarding the appropriate processes.

# Appendix A: Executive Privilege

## What is executive privilege?

Executive privilege is a privilege held by the Executive Government. It is similar to public interest immunity, but applies to Parliamentary Committee inquiries (as opposed to litigation before courts or executive inquiries such as Royal Commissions or Boards of Inquiry).

The Government may claim executive privilege in response to a Parliamentary Committee request for information if it considers the public interest in withholding the information outweighs the public interest in providing it to the Parliamentary Committee.

## What can a claim of executive privilege be made?

In assessing whether the public interest in withholding the information outweighs the public interest in providing it, various Victorian Governments have informed Parliaments that they will consider factors such as whether providing the information would:

1. reveal, directly or indirectly, the deliberative processes of Cabinet;
2. reveal high-level confidential deliberative processes of the Executive Government, or otherwise genuinely jeopardise the necessary relationship of trust and confidence between a Minister and public officials;
3. reveal information obtained by the Executive Government on the basis that it would be kept confidential, including because the documents are subject to statutory confidentiality provisions that apply to Parliament;
4. reveal confidential legal advice to the Executive Government; or
5. otherwise jeopardise the public interest, in particular where disclosure would:
  - a. prejudice national security or public safety
  - b. prejudice law enforcement investigations or prosecutions
  - c. materially damage the State's financial or commercial interests
  - d. prejudice intergovernmental and diplomatic relations
  - e. prejudice legal proceedings

## Do I have to produce documents or provide evidence that is subject to a claim of executive privilege?

In relation to requests for document that are subject to a claim of executive privilege, refer to paragraphs 49-60.

In relation to providing other evidence that might be subject to a claim of executive privilege, refer to paragraphs 120-123.

# Appendix B: Further guidance and information

## Additional Guidance for Witnesses

The Parliament of Victoria has published the following guideline that may assist witnesses who appear before Parliamentary Committees:

1. Attend a public hearing

## Further Information

Additional information can also be located at:

1. Campbell, Enid, *Parliamentary Privilege* (Federation Press, 2003)
2. Code of Conduct for Victorian Public Sector Employees 2015
3. Hallett, Leonard Arther, *Royal Commissions and Boards of Inquiry* (Law Book Company, 1982)
4. *Inquiries Act 2014* (Vic)
5. *Inquiries Regulations 2015* (Vic)
6. Joint Standing Orders and Joint Rules of Practice of the Parliament of Victoria
7. Legislative Assembly of Victoria Standing Orders (January 2024)
8. Legislative Council of Victoria Standing Orders (2022)
9. Parliament of Victoria, "Attend a public hearing", available at <https://www.parliament.vic.gov.au/get-involved/public-hearings/>
10. Parliament of Victoria, "Guidance of making a submission", available at <https://www.parliament.vic.gov.au/get-involved/submissions/>
11. Parliament of Victoria, "The inquiry process", available at <https://www.parliament.vic.gov.au/get-involved/inquiry-process/>
12. *Parliamentary Committees Act 2003* (Vic)
13. Prasser, Scott, *Royal Commissions and Public Inquiries in Australia* (LexisNexis Butterworths, 2006)
14. Taylor, Greg, *The Constitution of Victoria* (Federation Press, 2006)
15. Waugh, John, 'Contempt of Parliament in Victoria' (2005) 26 *Adelaide Law Review* 29

