

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

NOTES FOR WITNESSES AT EAST COAST GAS INQUIRY HEARINGS

This hearing is convened under Part VIIA of the *Competition and Consumer Act 2010*. It is held pursuant to a notice given by the Minister for Small Business requiring the Australian Competition and Consumer Commission (ACCC) to hold an inquiry into the competitiveness of wholesale gas prices and the structure of the gas industry in Eastern Australia.

The terms of reference for this inquiry have been published on the ACCC's website, together with an issues paper. All public submissions and a schedule of public hearings will also be published on the website.

Procedure

The procedure to be followed is within the discretion of the inquiry Chair. The procedure for the taking of evidence will generally be as follows:

- each witness will be examined separately;
- all evidence will be taken on oath or affirmation;
- where a witness statement has been provided (see below) the witness will be asked to verify, on oath or affirmation, that their statement is true and correct;
- the witness will then be asked questions by the ACCC and/or counsel assisting the inquiry;
- the witness will then be given the opportunity to make any clarifying remarks, either directly or (where the witness is represented) through questioning by their legal representative. These remarks should be confined to clarifying or responding to issues that arose during their examination;
- evidence will be taken in public unless an application is made, and the ACCC agrees, for the evidence to be kept confidential, in which case that part of the hearing will be held in private - while a witness can ask to give evidence in private at any time, they are encouraged to advise the ACCC in advance if they wish to do so;
- if evidence is to be given in private, all persons other than the Commissioners, counsel and solicitors assisting the inquiry, ACCC staff, the witness and (if represented) the witness's legal representative, may be required to leave the room for parts of the hearing.

A transcript of each hearing at the inquiry will be taken. The transcript of (other than of evidence given in private) will be made available on the ACCC's website, and a copy will be provided to the relevant witness.

Written statements

If a witness chooses to submit evidence in the form of a written statement, they may do so by submitting the statement to the ACCC, preferably at least 5 days prior to the date they are scheduled to give evidence and preferably in electronic form (PDF or Microsoft Word) addressed to:

East Coast Gas Inquiry
Australian Competition and Consumer Commission
Level 35, 360 Elizabeth Street
Melbourne Central
Melbourne Vic 3000

Attention: Jeremy Llewellyn
By email: gas.inquiry@accc.gov.au

If a witness wishes to include evidence of a confidential nature in a written statement, they should provide:

- a confidential version of their statement, with confidential parts clearly identified;
- a public version of their statement, with confidential parts deleted; and
- the reasons for the request for confidentiality.

The ACCC will then determine whether it is satisfied that the material is of a confidential nature, and whether it is appropriate to keep the material confidential. If the ACCC is not so satisfied in respect of any such material, the witness will be given the opportunity of withdrawing that material from their statement.

Any written statement will be made publicly available on the ACCC's website (omitting any confidential material). If the statement has not been verified on oath or affirmation, the Commission will treat it as a submission to the inquiry.

Legal representation

A witness may have a legal representative, but any participation by a legal representative present at a hearing will be at the discretion of the inquiry Chair. A legal representative's role will generally be limited to raising objections to questions and asking any clarifying questions in re-examination, and they may not interrupt or disrupt the hearing.

Any witness who intends to have a legal representative present at a hearing should notify the ACCC of the identity of the representative at least 1 day before they are scheduled to give evidence.

Protection and liability of witnesses

Under section 95V of the *Competition and Consumer Act 2010*, a witness summonsed to appear at an inquiry, or giving evidence on oath or affirmation, has the same protection, and is subject to the same liabilities, as a witness in proceedings in the High Court of Australia. A barrister, solicitor or other person appearing on behalf of another person at the inquiry has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court (*Competition and Consumer Regulations*, regulation 28AA).

It is a serious offence under the Criminal Code for a witness to give evidence at this inquiry that the witness knows is false or misleading, or to omit any matter or thing without which the evidence is misleading.

Under sections 95T and 95U of the *Competition and Consumer Act 2010*, it is a criminal offence if a person, without reasonable excuse:

- fails to attend as required by a summons or appear and report from day to day, unless excused or released from further attendance;
- refuses to be sworn or make an affirmation if required to do so;
- refuses or fails to answer a question that a witness is required to answer by the inquiry Chair;
- refuses or fails to produce a document that a witness is required to produce by a summons.