

The Australian Building and Construction Commissioner (ABC Commissioner) has the power to compel a witness to attend an examination and answer questions or provide documents relevant to an investigation.

The power is used when there is a belief on reasonable grounds that the evidence or documents being sought are relevant to an investigation.

The compliance power is contained in the *Building and Construction Industry Improvement Act 2005* (BCII Act) and is only used as a last resort for obtaining information.

Only the ABC Commissioner or Deputy Commissioner has the discretion to use this power to compel a witness to provide evidence and documents.

It is an offence not to comply.

## When is the compliance power used?

The compliance power may only be used if the ABC Commissioner or Deputy Commissioner believes, on reasonable grounds, that a person is capable of giving evidence or has documents relevant to an investigation.

The person will be issued with a written notice to attend an examination or provide documents.

## What are the circumstances in which the compliance power is used?

There are two main circumstances in which the compliance power is used:

- Where a person has already refused a request by an ABCC Inspector to voluntarily provide the information, the ABC Commissioner or Deputy Commissioner may issue a written notice to that person to attend an examination or provide documents relevant to an investigation.
- Where an individual is afraid of possible retribution for assisting in an ABCC investigation, they may request the compliance power be used. This can afford the individual with some protection as examinations are confidential.

## How would I be notified of an examination?

The ABCC will serve you with a notice to attend an examination at least 14 days before the examination is to take place. A covering letter will explain your rights and obligations.

If you have any queries, the name and phone number of an ABCC staff member are also provided.

## What happens during an examination?

The ABC Commissioner, a Deputy Commissioner or an Assistant Commissioner will preside over the hearing.

Prior to the examination commencing the presiding officer will explain the procedures and ensure that you understand the process. Any questions that you have will be answered at this point.

The examination will also be attended by counsel assisting the presiding officer and relevant ABCC staff.

When required, you must take an oath or affirmation before giving evidence.

The presiding officer and counsel assisting will ask you questions relevant to the ABCC's investigation.

Regular rest breaks will be scheduled.

Examinations do not usually exceed half a day.

## Are there any procedures the ABCC must follow?

Yes. The *Guidelines in relation to the exercise of Compliance Powers in the Building and Construction Industry* detail the procedures the ABCC must follow. These can be found on the Examinations page of the ABCC website.

## Can I have legal representation?

Every witness at an examination has the right to be legally represented. This is guaranteed by law. Other third parties are not permitted in the examination.

## Can the information I provide be used against me?

Any information you provide cannot be used against you in court. This includes information that would incriminate you or expose you to a penalty under workplace relations laws or any other laws. It also includes information that you give in good faith that would expose another person to loss, damage or injury of any kind.

The only information that can be used against you is if you give false or misleading statements on oath, or if you obstruct or hinder a Commonwealth public official. Such failures to comply may be referred to the Commonwealth Director of Public Prosecutions (CDPP).



# ABCC Compliance Power & Examinations

→ Advice for witnesses

## Further information

For further information see:

Guidelines in relation to the exercise of Compliance Powers in  
the Building and Construction Industry

ABCC fact sheets:

- Compliance Powers of the Australian Building and  
Construction Commissioner
- Powers of Australian Building and Construction  
Commission Inspectors

## Contact the ABCC

Hotline - 1800 003 338

Website - [www.abcc.gov.au](http://www.abcc.gov.au)

Email - [enquiry@abcc.gov.au](mailto:enquiry@abcc.gov.au)

### Can I tell anyone about the examination?

You can tell anyone that you are required to attend an examination or that you have attended an examination. You can also say what the investigation is about.

However, the presiding officer may direct a witness and their legal representative not to disclose the content of the examination.

This means you cannot discuss the questions you were asked and the evidence you gave with anyone other than your legal representative until the direction is withdrawn. You will be advised in writing when this occurs.

The direction is intended to protect the privacy of the proceedings.

### How can the information I provide be used?

The written notice requesting your attendance at an examination will provide details of the matter under investigation. The information you provide during an examination will generally be used as evidence for the matter under investigation.

Information obtained through an examination is regarded as 'protected information'. It is a criminal offence for ABCC staff to disclose protected information for any purpose other than their official employment.

A maximum penalty of 12 months imprisonment may be imposed by the courts for an ABCC staff member improperly disclosing protected information.

For more information, please see the Protected Information fact sheet available from the ABCC website:  
[www.abcc.gov.au/abcc/factsheets](http://www.abcc.gov.au/abcc/factsheets).

### What happens after the examination?

Witnesses will be sent a transcript of the interview as soon as reasonably possible. Witnesses may submit corrections by a specific date.

### What happens if I refuse to attend an examination?

It is an offence to refuse to attend an ABCC examination. The ABC Commissioner can refer this to the CDPP. If the CDPP chooses to prosecute, the matter would then be before a court and subject to any penalty it determines.

The maximum penalty is six months imprisonment.