

# CCT - COUNCILLOR CONDUCT TRIBUNAL

## PRACTICE DIRECTION

No 2 of 2020

Effective: 28 October 2020

### General Hearing Protocol No 2

1. The purpose of this Practice Direction is to establish general procedures relating to the conduct of hearings of the Councillor Conduct Tribunal (“the Tribunal”). The practice direction is issued under section 150DV of the *Local Government Act 2009* (Qld) (“LG Act”).
2. This Practice Direction is intended to give guidance to parties appearing before the Tribunal in hearings to decide applications made by the Independent Assessor under section 150AJ of the LG Act. This Practice Direction expands upon, and does not repeal or replace, Practice Direction No 1 of 2019 dated 5 February 2019 which continues to apply.
3. The purposes of this Practice Direction include:
  - (a.) to inform all parties and legal practitioners appearing before the Tribunal of some of the general procedures for Tribunal hearings; and
  - (b.) to clarify some hearing related protocols.
4. This Practice Direction is effective from 28 October 2020. To the extent practicable, it also applies to applications made by the Independent Assessor to the Tribunal under section 150AJ of the Act either before or after 28 October 2020.
5. Nothing in this Practice Direction repeals or abrogates the protocol published on the Tribunal’s website on 16 April 2020 about the use of technology during COVID-19, which continues to apply until further notice.

### **Applications by the Independent Assessor to the Tribunal under section 150AJ of the *Local Government Act 2009* (Qld)**

6. Under section 150AJ of the LG Act, the Independent Assessor may apply to the Tribunal to decide whether a councillor has engaged in:
  - (a.) misconduct; or

(b.) inappropriate conduct that is connected to conduct of the councillor that is alleged misconduct.

7. Under section 150AL of the LG Act the Tribunal must conduct a hearing about the application.
8. This Practice Direction describes the usual process which the Tribunal will follow in conducting a hearing under the LG Act.

### **The Tribunal's overriding approach to conducting a hearing**

9. Under section 150AP of the LG Act, the hearing must be conducted in the way set out in chapter 7, part 1 of the LG Act.
10. Under section 213 of the LG Act, the Tribunal will always observe natural justice, but will act as quickly and informally as is consistent with a fair and proper consideration of the issues raised in the hearing. The Tribunal expects the parties' cooperation in determining applications as quickly and as informally as is possible, while at all times observing the principles of natural justice.
11. As part of its obligation to act as quickly and as informally as is consistent with a fair and proper consideration of the issues raised in the hearing, the Tribunal will give consideration to conducting any oral hearings by telephone or video link, rather than in person.
12. Where possible, and where it is consistent with the observation of the principles of natural justice in the circumstances of each case, the Tribunal will favour a conduct of the hearing which advances a quick and informal process. When managing all applications made to the Tribunal under section 150AJ of the LG Act, the Tribunal will strive to ensure that:
  - (a.) the applications are dealt with justly, efficiently, and expeditiously;
  - (b.) all parties, their representatives, and others appearing before the Tribunal are dealt with fairly and impartially; and
  - (c.) all relevant material is available to the Tribunal in a timely fashion.
13. Under section 213(3) of the LG Act and s298 of the *Local Government Regulation 2012* (Qld), a hearing in the Tribunal will always be held in public unless the Tribunal

directs the hearing is to be held in private (i.e. a “closed hearing” which only the parties, their legal representatives, and any person giving evidence may attend). The Tribunal will only in special circumstances direct a hearing to be held in private and only when the Tribunal is satisfied that it is in the interests of justice to hold the hearing in private.

14. At all times, parties are expected to communicate courteously with each other, the Tribunal, and with all Tribunal staff.

### **The Tribunal’s approach to case management**

15. After an application by the Independent Assessor is made under section 150AJ of the LG Act, the Tribunal will adopt a case management approach to reduce costs and delay, so that there are:
  - (a.) fewer issues in contest;
  - (b.) in relation to those issues, no greater factual investigation that justice requires;
  - and
  - (c.) as few interlocutory applications or preliminary issues as necessary for the just and efficient determination of the applications.
16. The Tribunal’s case management approach will always favour, where practicable and in the interests of justice, a quick and informal resolution of the application. This will be a focus of the Tribunal’s approach to deciding applications under the LG Act.
17. After the Independent Assessor makes an application under section 150AJ of the LG Act, the Tribunal may either issue directions to the parties or list the application for an initial case management directions hearing. If the matter is listed for an initial case management directions hearing, the parties will be informed of the date and time of the directions hearing.
18. For the issuing of directions to the parties or an initial case management directions hearing the Tribunal will be constituted by either the President or one member chosen by the President, pursuant to section 150AM(b) of the LG Act.
19. The purpose of the initial directions hearing is to identify any issues at the earliest possible stage and to manage them as quickly, efficiently, and as fairly as possible. The application will not be decided at the initial directions hearing.

20. At the initial case management directions hearing, the Tribunal may consider:
- (a.) the appropriate course of efficient preparation of the application for final hearing, and identifying those steps required to be completed before the application is ready for a final hearing;
  - (b.) whether there are any preliminary issues or questions which are required to be determined by the Tribunal before the application can proceed to a final hearing;
  - (c.) whether it is possible to identify and narrow any issues in dispute, including directions for the preparation of lists of issues, including identifying those issues that are in dispute; and statements of agreed and disputed facts; an agreed chronology, etc;
  - (d.) the approach to the management of evidence, including the Independent Assessor identifying all evidence relevant to the application as early as possible, and the parties considering whether, and which, witnesses may be required for cross-examination;
  - (e.) the mode of the final hearing (whether in person, by telephone or video link), and whether the final hearing is one that is suitable to being conducted on the documents, without the parties or the witnesses appearing (pursuant to section 150AP(2) of the LG Act);
  - (f.) the possibility of allocating a date for a final hearing (or a date for the submissions of material if the hearing is to be conducted on the documents). This will require the parties to be in a position to inform the Tribunal about estimates of hearing length and availability for a hearing. See below at paragraph 47 about the process for allocating a hearing date.
21. The Tribunal expects the parties to communicate with each other in a meaningful way before any initial directions hearing to endeavour to agree on the most appropriate method to approach and prepare the matter for final hearing. When attending the initial directions hearing, the parties' representatives should have considered these issues and be able to assist the Tribunal in the management of the application for a final hearing.

22. Any proposed directions (either agreed or not) by the parties should, wherever practicable, be provided to the Registrar of the Tribunal as early as possible before any case management directions hearing (preferably by 4.00pm the business day before the directions hearing).
23. If the proposed directions are agreed, then whenever practicable, the Tribunal may make the directions “on the documents”.
24. The Tribunal’s hearing room facilities are finite. If the directions are not agreed, the Tribunal will, in most instances, conduct the directions hearing by telephone or video link. If a party wishes the directions hearing to be heard in person, then the party must notify the Registrar of the Tribunal as early as possible and stating the reasons why a hearing in person should occur.
25. The parties are expected to comply with all Tribunal directions. The parties must use their best endeavours to assist the Tribunal to fulfil its statutory objectives. As soon as a party becomes aware that they may not be able to comply with a Tribunal direction, and before the deadline, the party must contact the Tribunal to request extra time. The request must:
  - (a.) be in writing;
  - (b.) explain the reasons for requesting more time; and
  - (c.) tell the Tribunal whether the other party agrees to the request.
26. The Tribunal will decide whether to grant an extension of time and its length. A party should not assume that an extension of time will be granted. In considering a request for an extension, the Tribunal may take into account the following factors (which are not exhaustive):
  - (a.) the reason provided for not complying with the direction;
  - (b.) the notice given in requesting the extension;
  - (c.) any significant delays in progressing the application;
  - (d.) whether any other listed event (such as a hearing date or other deadline) will need to be moved;
  - (e.) the length of additional time requested; and

(f.) whether the other party opposes or supports the extension.

27. Either party may request a directions hearing in writing together with an explanation for why the directions hearing is required. The objective of the initial case management directions hearing is to ensure that future interlocutory hearings or directions hearings are kept to a minimum. Before any interlocutory dispute is raised with the Tribunal, it expects the parties or their legal representatives to have conferred in good faith for the purpose of avoiding the need for the intervention of the Tribunal.

### **Dealing with other administrative or procedural matters relating to a hearing**

28. Under section 150AM of the LG Act, for dealing with an administrative or procedural matter related to a hearing, the Tribunal is to be constituted by the president, or not more than 3 members chosen by the president.
29. In practice, it will generally be the Chair of the members selected to hear a particular application who will be authorised by the President to decide administrative or procedural matters related to a hearing.

### **Filing or lodging documents**

30. All documents lodged or filed with the Tribunal must be clearly identified, dated, and each page paginated.
31. If an affidavit is filed or lodged with the Tribunal, each page must be paginated in a way that enables the document (and parts of it) to be easily identified by the Tribunal and each party. Any exhibits or exhibit bundle must be paginated. Ideally, an index should also be included at the front of the paginated bundle.

### **Conduct of hearings “on the documents” under section 150AP of the LG Act**

32. Under section 150AP(2) of the LG Act, the Tribunal may conduct the hearing from the documents brought before the Tribunal, without the parties or the witnesses appearing, if:
- (a.) the Tribunal considers it appropriate in all the circumstances; or
  - (b.) if the parties agree.

33. The Tribunal asks the parties to, in all cases, to confer between themselves and to reasonably consider in good faith whether the hearing is one that may be conducted on the documents under section 150AP(2) of the LG Act.
34. The Tribunal will conduct hearings on the documents wherever possible and provided that natural justice can be observed in the circumstances of each case. The Tribunal will explore with the parties at the initial case management directions hearing whether the hearing can be conducted on the documents.
35. Generally, the Tribunal will conduct hearings on the documents where the facts are agreed, if neither party requires witnesses for cross-examination, or where issues of credibility or contested states of mind are not in issue.
36. The fact that the parties are represented by lawyers does not automatically mean that the Tribunal will conduct an oral hearing with the parties and the witnesses appearing.
37. In some circumstances, the requirements of a fair hearing may require an oral hearing (either in person, or by telephone or video). For example, if issues of credit are genuinely material to deciding the application, the Tribunal will rarely conduct the hearing on the documents.
38. If the Tribunal proposes to conduct the hearing on the documents, the parties will be invited to make submissions on that question. The Tribunal will be guided, but not bound by, the submissions of the parties' about whether a hearing is conducted on the documents under section 150AP of the LG Act.
39. If the hearing is conducted on the documents under section 150AP(2) of the LG Act, the Tribunal will issue directions about the dates for the filing of evidence and submissions on all aspects of the hearing.

### **Legal representation**

40. Under section 150AN of the LG Act, the Independent Assessor is a party to the hearing. Under section 150AO of the LG Act, the councillor is a respondent to the application and a party to the hearing.
41. A party may represent themselves or may be represented by a legal practitioner.
42. A party may be represented by a legal practitioner subject to the Tribunal's power in section 213(2)(c) of the LG Act to refuse to allow a person to be represented by a legal

practitioner. The Tribunal will only refuse to allow a person to be represented by a legal practitioner if it is consistent with the observation of natural justice and with the Tribunal's obligation to act as quickly and informally as is consistent with a fair and proper consideration of the issues raised in the hearing.

### **Amendment of documents**

43. The Tribunal may allow a document to be amended: section 213(2)(f) of the LG Act.
44. Generally, the Tribunal will not allow a document to be amended unless it is also practicable to observe natural justice in all of the circumstances of the case.
45. A party who wishes to amend a document should:
  - (a.) first check whether the amendment is opposed by the other party;
  - (b.) apply to the Tribunal for leave to amend a document. The application for leave should be in writing and explain why the amendment is required and the reasons why the Tribunal should allow the amendment, having regard to the procedure for a hearing in section 213(1) of the LG Act.
46. The Tribunal will then, after providing an opportunity to the other parties to be heard on the matter, decide whether to allow the amendment, and any conditions on which the amendment is allowed. Unless there are good reasons, the Tribunal will decide the question on the documents and without an oral hearing.

### **Allocating a final hearing date**

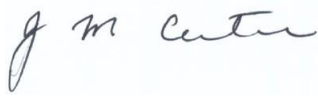
47. Once a range of possible dates for a final hearing has been determined, the Registrar will arrange a date and place for the hearing and advise the parties. A hearing date usually must be booked several weeks in advance and is rarely available at short notice.
48. If the parties estimate that the final hearing will take more than one day, they should provide an accurate estimate of hearing length to allow the Registrar to book facilities to accommodate a hearing over consecutive (or near consecutive) days.

### **Costs**

49. The Tribunal does not have the power to award costs against a party.



50. The costs of a hearing are governed by s150DU of the LG Act.

A handwritten signature in black ink, appearing to read "June Anstee", is written over a light blue rectangular background.

June Anstee

President

28 October 2020