



INTEGRITY TRIBUNAL

Hearings and conferences

About this practice direction

This Practice Direction provides procedures for Directions conferences and hearings that may be held by an Integrity Tribunal.

Overview

The Practice Directions (the Directions) for the Integrity Tribunal (the Tribunal) are issued by the Chief Commissioner of the Integrity Commission (the Commission) under section 69(2) of the *Integrity Commission Act 2009* (Tas) (the Act).

The Directions set out information and the procedures that will be followed by a Tribunal when conducting an inquiry. They should be read together with the Act and any other guidelines or procedural information issued by the Tribunal or the Inquiry Office. The Directions do not replace or modify legislation, and to the extent of any inconsistency, the legislation applies.

Up-to-date Directions are available from the Commission's [website](#).

The Tribunal is not bound by the Directions and may vary its procedures for individual inquiries.

All references in the Directions to sections of an Act are to sections in the Act, unless otherwise specified.

Definitions

Definitions of common terms are provided in Practice Direction 1 and are not replicated here.

Conduct and procedure of inquiry

The inquiry process is flexible and enables a Tribunal to receive the best information in the most appropriate way for the issues it has to determine. It is an inquisitorial process that involves collecting information and asking questions.

A Tribunal may conduct an inquiry in any manner it considers appropriate. An inquiry may or may not involve a hearing.

Directions conferences

A Tribunal may conduct a Directions conference in relation to an inquiry, under section 68.

The Tribunal may issue a notice under section 68(2) requiring a person to:

- ▼ attend a directions conference, and
- ▼ provide and produce any specified record, information, material or thing at the conference.

A Directions conference is held in private. It is a discussion convened by the Tribunal at the start of an inquiry to consider:

- ▼ Representation of parties
- ▼ Jurisdiction
- ▼ Evidence to be adduced in the inquiry or any hearings, including potential witnesses or other documentation or records, and
- ▼ The expected timetable for any hearings.

It is an offence to fail to comply with a Notice of Directions Conference.

Hearings

A Tribunal may decide to inform itself, and enable evidence to be tested during its inquiry, by holding a hearing. Inquiries may however be conducted without a hearing.

The public officer who is the subject of the inquiry and the principal officer of the relevant public authority must be served a notice requesting their attendance at a hearing, under Schedule 6, clause 2(1). This notice must be served at least 14 days in advance of the hearing.

A Tribunal may also serve a Notice requiring a person who appears to be material to the inquiry to attend the hearing, under Schedule 6, clause 2(2).

Where any of the above persons are required to give evidence at the hearing or to produce any records or other materials, they will also be served a Notice under section 71.

Subject to the control of the Tribunal, Counsel Assisting may determine:

- ▼ who is to be called as a witness at a hearing, and
- ▼ the order in which those witnesses are called and examined.

The Tribunal may call some witnesses to give evidence on more than one occasion.

The Tribunal may decide to receive the evidence of a witness by written statement (including by affidavit or by statutory declaration) or orally, or both. At a hearing a

Tribunal will generally require witnesses to give evidence on oath or affirmation. A Tribunal may require witnesses to give evidence concurrently with other witnesses.

Appearing before a hearing

In responding to a Notice of inquiry issued under section 65, the public officer who is the subject of the inquiry may make written or oral submissions or give evidence that explains or contradicts the allegation or the evidence in the notice. They may also call or cross-examine a witness, or produce any records, information, material or other thing.

Subject to the control of the Tribunal, all witnesses will be called to give evidence and be examined by Counsel Assisting. Witnesses may apply to appear remotely.

Witnesses may be cross-examined by other parties or their representative. Leave to cross-examine a witness will be subject to the discretion of, and any limitations or conditions imposed by, the Tribunal.

Further information on leave to appear at a hearing is provided in **Practice Direction 2**.

Access to hearings

In accordance with Schedule 6, clause 1, hearings are to be open to the public. The Tribunal may however close a hearing, or parts of a hearing, to the public (see **Exclusion orders**, below).

Members of the public, including the media, may attend hearings in person, unless the hearings are otherwise closed or restricted. The Tribunal may consider live streaming a hearing if it considers this to be in the public interest.

The time and location of open hearings will be published on the Tribunal website.

Publication of evidence

Subject to any direction or decision of a Tribunal to the contrary, a Tribunal may publish on the Tribunal's website:

- ▼ transcripts of evidence at the hearings
- ▼ witness statements provided to the Tribunal, and
- ▼ any records, material or thing received into evidence at the hearings.

Restrictions on filming and recording

Subject to any direction to the contrary, it is not permitted for parties participating in or attending a Tribunal to film (including still photography) or otherwise record the Tribunal's proceedings. This includes:

- ▼ a hearing room or other rooms and facilities at the hearing venues
- ▼ any witness box or public gallery within the hearing room
- ▼ any foyer, reception or lifts of a building in which the Tribunal is conducting a hearing, and
- ▼ any Tribunal member, Counsel Assisting the Tribunal, Tribunal staff, Tribunal lawyers, witnesses, their legal representatives or members of the public, either in the hearing room or entering or leaving the hearing room.

The Tribunal may at its discretion permit limited filming of hearings by a pool camera or a photographer engaged by the Tribunal.

At all times, news media organisations and their representatives must comply with:

- ▼ Any media guidelines or directions issued by the Tribunal
- ▼ relevant legal requirements, including (without limitation) the *Evidence Act 2001* (Tas) and the *Youth Justice Act 1997* (Tas)
- ▼ restricted publication orders and exclusion orders, and
- ▼ requests by Tribunal members or Tribunal staff

Mobile phones, laptops, tablets and other electronic devices must be placed on silent while in the hearing room.

Exclusion orders (closed hearings)

The Tribunal may, if it has reasonable grounds for doing so, make an order:

- ▼ that a hearing be closed to the public
- ▼ excluding any person from a hearing, or
- ▼ prohibiting the reporting or other disclosure of all or any of the proceedings at a hearing.

Reasonable grounds for closing a hearing or excluding persons will include consideration of:

- ▼ The potential increase the cost of the hearing, and that increased cost is not justified in light of the increased benefits of making the hearing public
- ▼ an unreasonable risk of harm to a person's reputation, safety or wellbeing, and/or
- ▼ potential to affect the right to a fair trial (disciplinary or criminal).

Hearings may also be closed to the public or restricted to general access for public health considerations (see **COVID-safe hearings**, below).

The Tribunal recognises that in some circumstances, it may be necessary or appropriate to receive part or all of the evidence from a witness or witnesses in a restricted or closed hearing.

A Tribunal may make an order excluding a person or persons from a hearing where it enables a witness to give their evidence privately with only certain people present in the hearing room, such as the Tribunal member(s), Counsel Assisting, and the representatives of any person or organisation with leave to appear at the hearing. All other people, including media, may be required to leave the hearing room.

Applying for an Exclusion order

A person appearing at the hearing or their representative, may apply in writing for the making of an Exclusion order if they have been:

- ▼ served with a notice requiring them to attend before a Tribunal to give evidence orally at a hearing, or
- ▼ granted leave to appear in respect of any witness or evidence to be given at a hearing.

The application is to be submitted to the Inquiry Office at least 3 business days before the relevant witness is required to appear at a hearing. The application must be in writing and provide the basis for the application, with particular emphasis on the reasonable grounds for closing the hearing or excluding certain persons (outlined above).

A Tribunal may also make an Exclusion order on its own motion.

A Tribunal may make an Exclusion order or otherwise close a hearing to the public at the commencement of the hearing. Copies of such an order may be published outside the door of the hearing room and may be published to the Tribunal's website.

Restricted publication orders

A Tribunal may, by order, prohibit or restrict the:

- ▼ public reporting of a hearing, or
- ▼ publishing of any evidence taken or received by it.

For example, a Tribunal may prohibit or restrict publication of:

- ▼ any information that may enable a person who has given, or who is to give, information or evidence to a Tribunal to be identified
- ▼ the identity of any other person, or
- ▼ any information or evidence given to a Tribunal for the purposes of its inquiry.

A Tribunal may make the order if it is satisfied that the public interest in the reporting of that hearing, or the publication of that information, is outweighed by any other consideration, including public security, privacy of personal or financial affairs, or the rights of any person to a fair trial.

Hearings subject to a restricted publication order must not be live streamed. Redactions may also be made to the hearing transcript prior to any publication (discussed below).

Failure to comply with the terms of a restricted publication order may constitute contempt of the Tribunal under section 80(3)(d), punishable by fine of up to 2000 penalty units.

Applying for a Prohibited publication order

A person, or their legal representative, may apply in writing for the making of a restricted publication order if they have been served with a notice requiring them to:

- ▼ appear before a Tribunal to give evidence orally at a hearing
- ▼ prepare a statement
- ▼ produce any document or thing in their possession or control which a Tribunal considers relevant to its inquiry, or
- ▼ granted leave to appear in respect of any witness or evidence to be given at a hearing.

The application is to be submitted to the Inquiry Office at least 3 business days before the relevant witness is required to appear at a hearing. The application must be in writing and provide the basis for the application, with particular emphasis on the reasonable grounds for closing the hearing or excluding certain persons (outlined above).

A Tribunal may also make a restricted publication order on its own motion. The Tribunal must state, in general terms, the reasons for making the order, under Schedule 6, clause (4)(2). The Tribunal may place a copy of a restricted publication order outside the door of the hearing room and may publish it to the Tribunal's website.

COVID-safe hearings

The health, safety and wellbeing of the community, and the Tribunal and its staff is paramount and any relevant COVID-safety measures will be enforced. Relevant information will be accessible on the Tribunal website and at the hearing location.

Offences

A person commits an offence if they take any one of a number of actions set out in sections 80–81. These offences include various actions relating to a Tribunal, its inquiry, a hearing or an inquiry officer. The offences are variously punishable by fines, imprisonment or both.

For example, a Tribunal may issue a notice to compel a person to attend to give evidence as a witness (Notice to attend) under section 71, and including at its hearings under Schedule 6.

Under section 80(5), a person is guilty of an offence if they fail without reasonable excuse to:

- ▼ attend an inquiry of the Tribunal as required by the Tribunal
- ▼ take an oath or make an affirmation at an inquiry of the Tribunal
- ▼ produce or authorise another person to produce any record, information, material or thing when required by the Tribunal to do so
- ▼ answer any question when required by the Tribunal to do so, or
- ▼ assist in the course of an inquiry of the Tribunal.

A person served with a Notice to attend may make a claim that the person has a reasonable excuse for failing to comply with the Notice. A person may make a claim of reasonable excuse by notifying the Inquiry Office in writing, accompanied by a short written submission of no more than 5 pages, setting out the basis upon which each claim is made.

If a Tribunal is satisfied the claim of reasonable excuse is established, it may vary or revoke the relevant Notice and will advise the applicant in writing. If a Tribunal is not satisfied the claim of reasonable excuse is established, it will advise the applicant in writing.

Under section 80(3), a person commits an offence if a Tribunal is holding a hearing and the person:

- ▼ insults a member of the Tribunal in relation to the performance of his or her functions as a member
- ▼ interrupts proceedings of the Tribunal
- ▼ creates a disturbance, or take part in creating or continuing a disturbance, in or near a place where the Tribunal is sitting, or
- ▼ does anything that would, if the Tribunal were a court of record, constitute a contempt of that court.

This direction is given under section 69(2) of the *Integrity Commission Act 2009*.

This takes effect from 29 August 2022.



Inquiry Office

We are available to provide support and assistance with managing your participation in the inquiry: contact@integrity.tas.gov.au or 1300 720 289.

For more information on inquiries and Integrity Tribunals, go to www.integrity.tas.gov.au/investigating/integrity-tribunals