



# Inquiry Into the City of Perth

## PRACTICE DIRECTIONS

*Local Government Act 1995  
Royal Commissions Act 1968*

### INDEX

1	INTRODUCTORY MATTERS .....	2
2	PROVIDING INFORMATION .....	2
3	INITIAL PUBLIC HEARING .....	3
4	HEARING ADMINISTRATION .....	3
5	PRIVATE HEARINGS .....	4
6	LEAVE TO APPEAR.....	5
7	LEAVE TO BE REPRESENTED.....	9
8	PRODUCTION OF DOCUMENTS BEFORE THE INQUIRY.....	10
9	CALLING OF WITNESSES.....	11
10	EXAMINATION OF WITNESSES .....	13
11	OBJECTIONS TO EVIDENCE .....	19
12	PRODUCTION OF DOCUMENTS BY PARTIES.....	19
13	CONFIDENTIALITY.....	20
14	LEGAL PROFESSIONAL PRIVILEGE .....	22
15	SUPPRESSION ORDERS .....	24
16	EXTENSIONS OF TIME.....	26
17	OTHER PROCEDURAL MATTERS .....	27
18	FINAL SUBMISSIONS .....	28

## 1 INTRODUCTORY MATTERS

- 1.1 These practice directions govern the conduct of the Inquiry into the City of Perth (**Inquiry**). They should be read in conjunction with the *Royal Commissions Act 1968 (WA) (RCA)*, the Terms of Reference dated 24 April 2018 (**Terms of Reference**)<sup>1</sup> and Part 8 Division 2 of the *Local Government Act 1995 (WA) (LGA)*.
- 1.2 These practice directions provide general guidance on the procedures the Inquiry will follow. Where the Inquiry thinks appropriate, these practice directions may at any time be supplemented, varied or replaced.
- 1.3 Nothing in these practice directions derogates from the obligations in the RCA, the LGA, other legislation or the common law.

## 2 PROVIDING INFORMATION

- 2.1 The Inquiry invites submissions from all persons<sup>2</sup> with information or documents relevant to any of the matters described in the Terms of Reference.
- 2.2 Any person who wants to provide the Inquiry with information relevant to the Terms of Reference should contact the Inquiry through the online submission page<sup>3</sup> or by telephone<sup>4</sup> or email<sup>5</sup>.

---

<sup>1</sup> The Terms of Reference are available at <https://www.dlgsc.wa.gov.au/InquiryCoP/Pages/TOR.aspx>.

<sup>2</sup> Reference to person or persons includes a body politic or corporate.

<sup>3</sup> <https://www.dlgsc.wa.gov.au/InquiryCoP/Pages/ContactUs.aspx>.

<sup>4</sup> (08) 6160 1510.

<sup>5</sup> [info@inquiryintocityofperth.wa.gov.au](mailto:info@inquiryintocityofperth.wa.gov.au).

- 2.3 Unless otherwise advised in writing, the Inquiry will assume that all communications to the person providing information may be directed to the address from which the Inquiry received the information.

### **3 INITIAL PUBLIC HEARING**

- 3.1 The Inquiry will hold an initial public hearing at 10.30am on 21 November 2018 at Level 18, 111 St Georges Terrace, Perth.
- 3.2 Applications for leave to appear will not be heard or determined at the initial public hearing. The issue of leave to appear is dealt with in practice direction 6.
- 3.3 The Inquiry will give notice of further public hearings by publishing notice on its website.

### **4 HEARING ADMINISTRATION**

- 4.1 The hearing days for the Inquiry will be between Monday and Friday of each week, except as otherwise advised. The usual hearing hours will be from 10:00am to 1:00pm and from 2.15pm to 4.15pm. The hearing room will be on Level 18, 111 St Georges Terrace, Perth.
- 4.2 The Inquiry's proceedings will be as orderly as possible. The Inquiry will endeavour to ensure that those persons whose interests may be adversely affected by the evidence before the Inquiry are treated fairly and in accordance with the requirements of procedural fairness, where applicable, while protecting confidentiality where that is deemed appropriate.

- 4.3 The Inquiry will publish its programme of public hearings on its website<sup>6</sup>. Details of the public hearings may also be obtained from the Inquiry's Executive Manager<sup>7</sup>.
- 4.4 Any person who, in the opinion of Counsel Assisting the Inquiry (**Counsel Assisting**), may be substantially and directly interested in, or materially affected by, evidence to be adduced before the Inquiry at a public hearing will, if reasonably practicable, be notified prior to that hearing.
- 4.5 Transcripts of all public hearings will be made available on the Inquiry's website. They will be posted as soon as practicable, subject to any order of the Inquiry.

## 5 PRIVATE HEARINGS

- 5.1 The Inquiry's hearings will ordinarily be public. However, the Inquiry may take the evidence of a person in private where it considers it necessary or appropriate to do so.
- 5.2 Only persons expressly authorised by the Inquiry will be permitted to be present. Ordinarily the Inquiry will expressly authorise the following persons to be present:
- (a) Counsel Assisting;
  - (b) the Solicitor Assisting the Inquiry (**Solicitor Assisting**);

---

<sup>6</sup> <https://www.dlgsc.wa.gov.au/InquiryCoP/Pages/default.aspx>.

<sup>7</sup> (08) 6160 1510.

- (c) any legal practitioner who has been granted leave by the Inquiry pursuant to practice direction 7 to represent the witness giving evidence in the private hearing; and
- (d) any Inquiry officer who will be supporting or assisting the Inquiry or Counsel Assisting during the hearing.

5.3 Where the Inquiry conducts a private hearing, the Inquiry will direct at the beginning of the private hearing that the witness who is being examined and his or her legal representative must not disclose any part of the evidence given by the witness, whether directly or indirectly, to any other person, unless that person has the prior and express written authorisation of the Inquiry. Any such direction will continue in effect until the Inquiry has concluded or the Inquiry orders otherwise.

5.4 In the ordinary course, the Inquiry will not rely on the evidence given in a private hearing to make an adverse finding against a party without that party having an opportunity to address any such evidence.

## **6 LEAVE TO APPEAR**

6.1 Any person who seeks to appear before the Inquiry (**Leave to Appear Applicant**) must make an application seeking leave to appear (**Leave to Appear Application**).

6.2 The Inquiry will, generally, grant leave to appear when a Leave to Appear Applicant:

- (a) is the subject of an inquiry to be undertaken; and/or

(b) has a direct or substantial interest in the hearing or the subject of inquiry;  
and/or

(c) may be the subject of an adverse finding by the Inquiry.

6.3 For the purpose of this practice direction, a Leave to Appear Applicant will have a direct or substantial interest in a hearing or subject of inquiry if the person's legal rights, financial interests, personal reputation, status or livelihood may be prejudiced by:

(a) the evidence heard by the Inquiry during the hearing or subject of inquiry;  
and/or

(b) the findings that may be made by the Inquiry based on the evidence heard by the Inquiry during the hearing or subject of inquiry.

6.4 The Leave to Appear Applicant must comply with the following procedure.

6.5 At the time the notice of a public hearing is published, the Inquiry will publish on its website the date by which Leave to Appear Applications must be made.

6.6 The Leave to Appear Application must be made to the Solicitor Assisting<sup>8</sup> by the date in practice direction 6.5 above using the application form available on the Inquiry's website and supported by any affidavit evidence and written submissions relied on by the Leave to Appear Applicant in support of the Leave to Appear Application. Any supporting affidavit evidence and written submissions must address the basis on which leave is sought:

---

<sup>8</sup> [nparkinson@inquiryintocityofperth.wa.gov.au](mailto:nparkinson@inquiryintocityofperth.wa.gov.au)

- (a) if leave to appear is sought on the basis of a direct or substantial interest in a hearing or subject of inquiry, the nature and extent of that interest;
- (b) if leave to appear is sought on the basis of the rules of procedural fairness, the basis on which the rules of procedural fairness are asserted to be engaged; and
- (c) if leave is sought to participate in a hearing other than a hearing where the person is a witness, what circumstances exist to indicate to the Inquiry that it is proper to allow such participation and the extent of any such participation.

6.7 Where a Leave to Appear Applicant makes a Leave to Appear Application, the Inquiry:

- (a) may require Counsel Assisting to submit responsive affidavit evidence and written submissions in reply;
- (b) will decide the Leave to Appear Application on the papers or notify the Leave to Appear Applicant if a hearing is required prior to such a decision being made; and
- (c) will notify the Leave to Appear Applicant in writing of the Inquiry's decision.

6.8 Except in exceptional circumstances, the Inquiry will not grant a person, whether legally represented or not, unconditional leave to appear. Grants of leave to appear will be confined to the hearing in which the person has a direct

or substantial interest and subject to specified conditions. Specifically, the Inquiry may:

- (a) limit the topics or issues on which the person granted leave may examine a witness;
- (b) impose time limits on examination; and
- (c) require submissions be written.

6.9 Where a person is granted leave to appear at a hearing the person, or the legal practitioner acting on the person's behalf:

- (a) will be entitled to participate in that hearing, subject to the control of the Inquiry and only to such extent as the Inquiry considers appropriate;
- (b) may apply to adduce evidence pursuant to practice directions 8 and/or 9;
- (c) may apply for leave to examine a witness pursuant to practice direction 10.6;
- (d) may object to the evidence adduced before the Inquiry pursuant to practice direction 11;
- (e) raise any other procedural or legal matters with the Inquiry pursuant to practice direction 17; and
- (f) may make submissions about the findings that are open to the Inquiry and the recommendations that the Inquiry may consider appropriate pursuant to practice direction 18.4.



## 7 LEAVE TO BE REPRESENTED

- 7.1 Any person who has been summonsed to give evidence before the Inquiry or who has been granted leave to appear before the Inquiry pursuant to practice direction 6, who wishes to be represented by a legal practitioner in the Inquiry's hearings (**Leave to be Represented Applicant**) must seek leave to be represented (**Leave to be Represented Application**).
- 7.2 The Leave to be Represented Applicant must comply with the following procedure.
- 7.3 The Leave to be Represented Applicant must apply in writing:
- (a) if the Leave to be Represented Applicant is making a Leave to Appear Application pursuant to practice direction 6 above, when the Leave to Appear Application is made; or
  - (b) if the Leave to be Represented Applicant is a witness summonsed to give evidence before the Inquiry, as soon as reasonably practicable after the Leave to be Represented Applicant is served with the summons by the Inquiry and in any event before the hearing at which the Applicant is summonsed to give evidence.
- 7.4 The Leave to be Represented Application must be made to the Solicitor Assisting using the application form available on the Inquiry's website.

## 8 PRODUCTION OF DOCUMENTS BEFORE THE INQUIRY

- 8.1 Each document produced to the Inquiry will be given a unique Inquiry documentary classification system number and will retain that number to identify it if and when it is tendered as evidence.
- 8.2 Subject to the control of the Inquiry, Counsel Assisting will determine what documentary or physical evidence will be tendered at a hearing and when it is tendered.
- 8.3 Any person seeking to have any additional document produced at a public or private hearing of the Inquiry (**Production Applicant**) must make an application to produce the document (**Production of Additional Documents Application**).
- 8.4 The Production Applicant must comply with the following procedure.
- 8.5 The Production Applicant must apply in writing using the application form available on the Inquiry's website and provide a copy of the document to the Solicitor Assisting:
- (a) as soon as practicable after its existence and its potential relevance to the Inquiry becomes known; and
  - (b) within a reasonable time before the hearing.
- 8.6 Where a Production Applicant makes a Production of Additional Documents Application, Counsel Assisting:

- (a) will determine the Production of Additional Documents Application and decide whether any such document will be produced and if produced, the time at which it will be produced;
- (b) may require the Production Applicant to produce further documents to enable the Production of Additional Documents Application to be considered; and
- (c) will notify the Production Application in writing of the decision.

8.7 If Counsel Assisting declines to produce a document before the Inquiry, the Production Applicant may apply to the Inquirer to review Counsel Assisting's decision by writing to the Associate to the Inquirer<sup>9</sup>.

## **9 CALLING OF WITNESSES**

9.1 Subject to the control of the Inquiry, Counsel Assisting will determine:

- (a) whether any person will be called to give evidence at a hearing; and
- (b) the order in which evidence will be adduced at a hearing.

9.2 All witnesses will give evidence under oath or affirmation pursuant to section 11 of the RCA.

9.3 All witnesses will be summonsed pursuant to section 9 of the RCA to appear before the Inquiry.

---

<sup>9</sup> mgibsonpowell@inquiryintocityofperth.wa.gov.au

- 9.4 Any person seeking to have the evidence of any other person put before the Inquiry (**Evidence Applicant**) must make an application (**Evidence Application**).
- 9.5 The Evidence Applicant must comply with the following procedure.
- 9.6 The Evidence Applicant must apply in writing to the Solicitor Assisting:
- (a) as soon as practicable after the existence of that prospective evidence and its potential relevance to the Inquiry becomes known; and
  - (b) within a reasonable time before the hearing.
- 9.7 The Evidence Application must:
- (a) be made using the application form available on the Inquiry's website;
  - (b) provide the name of each such witness; and
  - (c) include the written substance of the evidence which the Evidence Applicant will seek to adduce from that witness at a hearing.
- 9.8 Subject to the control of the Inquiry, Counsel Assisting will decide whether such witnesses will be called to give evidence before the Inquiry.
- 9.9 In determining any Evidence Application, Counsel Assisting or Inquiry officers may interview any such prospective witness and take further statements from him or her.
- 9.10 Any interview under practice direction 9.9 and the taking of any such additional statement will not occur in the presence of the Evidence

Applicant or the legal practitioner acting on the Evidence Applicant's behalf.

## **10 EXAMINATION OF WITNESSES**

10.1 All witnesses will first be called and examined by Counsel Assisting.

10.2 Subject to practice direction 10.4, the examination of witnesses will generally proceed in the following manner:

- (a) examination by Counsel Assisting;
- (b) examination (if any) by Counsel Assisting in accordance with practice direction 10.10;
- (c) examination by the witness's legal representative;
- (d) examination by any other person, or his or her legal representative, considered by the Inquiry to have a sufficient interest and who has been granted leave to do so;
- (e) further examination by the witness's legal representative; and
- (f) further examination by Counsel Assisting.

10.3 Legal practitioners should note that, further to practice direction 6.8:

- (a) the contents of the rules of procedural fairness do not require, in all cases, that counsel be afforded the opportunity to examine a witness; and

- (b) the Inquiry may limit the particular matters on which any such examination may occur and limit the time allowed for such examination.

10.4 When Counsel Assisting concludes examination of a witness, the Inquiry will ask counsel for that witness whether he or she seeks to apply to examine the witness. If counsel for the witness applies to examine the witness, the following procedure will apply.

- (a) The Inquiry will ask counsel to briefly identify the matters on which he or she proposes to examine and how an examination of those matters will advance the purposes of the Inquiry. The proposed questions should bear directly on the factual issues in, or provide necessary clarification of, the evidence adduced in Counsel Assisting's examination of the witness.
- (b) After counsel for the witness has identified the matters for examination, the Inquiry will invite Counsel Assisting to make submissions on whether the examination should proceed and if so, to what extent.
- (c) After Counsel Assisting's submissions on the matters in practice direction 10.4(b), the Inquiry will then determine whether those matters should be examined and, if so, what limitations will apply to that examination.

10.5 When counsel for the witness concludes any examination in accordance with practice direction 10.4 above, the Inquiry may invite counsel for any

other person with a sufficient interest in the matters the subject of that evidence to apply for leave to examine that witness.

10.6 Should counsel for any other person apply to examine any such witness, then the following procedure will apply.

(a) The Inquiry will ask counsel to briefly identify the topics on which he or she proposes to examine. The proposed questions should be directly relevant to the substantive interest of the counsel's client in the witness's evidence.

(b) The Inquiry will invite Counsel Assisting to make submissions on the application for leave.

(c) The Inquiry will determine the application for leave to examine and may attach conditions to the leave, for example, on the length of time for examination and the topics for examination.

10.7 If counsel is granted leave to examine in accordance with practice direction 10.6, but does not comply with any of the conditions attaching to the leave, Counsel Assisting will object.

10.8 When examination of the witness by counsel for the other party concludes, the Inquiry will ask counsel for that witness whether he or she seeks to apply to further examine the witness.

10.9 If counsel for the witness makes an application to further examine the witness, the procedure in practice direction 10.6 will *mutatis mutandis* apply, save and except that counsel's proposed questions should be

limited to questions necessary to clarify or explain the evidence given under examination by counsel for the other party.

10.10 If there are any unrepresented persons in a hearing and it appears to the Inquiry that they should be given an opportunity to examine a witness, then the procedure will be as follows.

- (a) An unrepresented person must provide any written question he or she would like to ask another witness to Counsel Assisting.
- (b) Counsel Assisting will decide whether it is appropriate to put any such question to that witness.
- (c) At an appropriate time, after Counsel Assisting has examined the witness, Counsel Assisting will then put the questions of the unrepresented person (as determined appropriate in accordance with practice direction 10.10(b)).
- (d) If the unrepresented person wishes to take issue with the decision of Counsel Assisting in accordance with practice direction 10.10(b), the Inquiry will allow the unrepresented person to address the Inquiry on that topic.
- (e) The Inquiry will then rule on whether the question should be put and, if necessary, in what form it should be put and it will then be put by Counsel Assisting.



- 10.11 Persons who have a direct or substantial interest in the subject matter of the Inquiry may be unaware of the totality of relevant evidence until the conclusion of the hearings.
- 10.12 The Inquiry may permit applications to recall a witness for examination (**Recalling Witness for Examination Application**).
- 10.13 The Inquiry will only permit a witness to be recalled for examination if the significance of the witness's evidence could not have been appreciated at the time that the witness initially gave evidence, or there are other extraordinary circumstances justifying the recall of that witness.
- 10.14 A person making a Recalling Witness for Examination Application (**Recalling Witness for Examination Applicant**) must comply with the following procedure.
- 10.15 The Recalling Witness for Examination Applicant must apply to the Solicitor Assisting in writing as soon as the need to recall and examine the witness becomes apparent.
- 10.16 The Recalling Witness for Examination Application must be made using the application form available on the Inquiry's website and supported by any affidavit evidence and written submissions relied on by the Recalling Witness for Examination Applicant in support of the Application at the time of submitting the form. Any such supporting affidavit evidence and written submissions must address:

- (a) why the significance of the witness's evidence could not be appreciated at the time that the witness initially gave evidence and /or any other extraordinary circumstances justifying the recall of the witness for examination;
- (b) the topics on which the Recalling Witness for Examination Applicant proposes to cross-examine the witness; and
- (c) the directions sought by the Recalling Witness for Examination Applicant from the Inquiry.

10.17 Where a Recalling Witness for Examination Application is made, the Inquiry:

- (a) may require Counsel Assisting to submit responsive affidavit evidence and written submissions in reply;
- (b) will decide the Recalling Witness for Examination Application on the papers or notify the Recalling Witness for Examination Applicant if a hearing is required prior to such a decision being made; and
- (c) notify the Recalling Witness for Examination Applicant in writing of the Inquiry's decision.

10.18 If the Inquiry grants the Recalling Witness for Examination Application, the Inquiry may:

- (a) limit the topics or issues on which the Recalling Witness for Examination Applicant's legal representative may examine that witness;
- (b) impose time limits on the examination.

## **11 OBJECTIONS TO EVIDENCE**

11.1 Witnesses, persons who have been given leave to appear before the Inquiry and legal representatives appearing before the Inquiry should be mindful of the investigative nature of the Inquiry when objecting to the evidence adduced before the Inquiry.

11.2 In particular, the following should be noted:

- (a) the Inquiry is not bound by the rules of evidence;
- (b) the concept of relevance in civil litigation or criminal proceedings does not apply to the Inquiry;
- (c) evidence sought to be adduced will be relevant to the Inquiry if there is a real possibility that the evidence may directly or indirectly inform the Inquiry's deliberations on the Terms of Reference.

## **12 PRODUCTION OF DOCUMENTS BY PARTIES**

12.1 The following practice directions will govern the production of documents to the Inquiry.

12.2 The Inquiry requires documents be produced to it electronically, unless a summons or notice to produce requires documents be produced in hard copy.

12.3 Any party who seeks to produce any document in hard copy must first write to the Solicitor Assisting before production and obtain permission to do so.

12.4 All electronic documents should be produced electronically in original format, being the file format in which they exist on the system of the person producing

the document. More specifically, Microsoft Outlook emails are to be produced as .msg files and Microsoft Word documents are to be produced as .doc or .docx files.

12.5 Where an electronic copy of a document does not exist, any hard copy must be scanned and rendered directly to Portable Document Format (PDF), so as to be machine-readable and capable of being word searched.

12.6 Any person producing any electronic document must ensure all parts of the document are produced, including all parts of any chain of correspondence and all attachments to any such document.

12.7 Any person required to produce any hard copy document must produce the original copy of the document.

### **13 CONFIDENTIALITY**

13.1 That documents or information may be confidential does not provide a valid basis for refusing to produce documents or provide information to the Inquiry.

13.2 However, any person seeking a direction from the Inquiry that confidential documents produced to the Inquiry not be published (**Confidentiality Claimant**) must make an application (**Confidentiality Application**).

13.3 The Confidentiality Claimant must comply with the following procedure.

13.4 The Confidentiality Claimant must clearly label or describe any information or documents, or any part of the information or documents, over which confidentiality is claimed. For example:

- (a) where documents are produced to the Inquiry in electronic form on an electronic storage device, the Confidentiality Claimant must store the documents in a folder or folders marked "Subject to Confidentiality"; or
- (b) where documents are produced to the Inquiry in hard copy form, the Confidentiality Claimant must provide the documents in a sealed envelope marked "Subject to Confidentiality".

13.5 The Confidentiality Claimant must make the Confidentiality Application in writing to the Solicitor Assisting as soon as reasonably practicable after the requirement to produce is imposed but by no later than the time of production.

13.6 The Confidentiality Application must be made using the application form available on the Inquiry's website and supported by any affidavit evidence and written submissions relied on by the Confidentiality Claimant in support of the Confidentiality Application. Any supporting affidavit evidence and written submissions must address:

- (a) the basis of the claim for confidentiality;
- (b) to whom the duty of confidentiality is alleged to be owed;
- (c) the prejudice that the Confidentiality Claimant or any other person would suffer if the information or documents were not kept confidential; and
- (d) the direction sought by the Confidentiality Claimant from the Inquiry.

13.7 Where a Confidentiality Claimant makes a Confidentiality Application, the Inquiry:

- (a) will maintain confidentiality over the subject matter of the application pending its determination;
- (b) may require Counsel Assisting to submit responsive affidavit evidence and written submissions in reply;
- (c) will decide the Confidentiality Application on the papers or notify the Confidentiality Claimant if a hearing is required prior to such a decision being made; and
- (d) will notify the Confidentiality Claimant in writing of the Inquiry's decision and, if the Inquiry upholds all or part of the Confidentiality Application, how the Inquiry will treat the confidential information or documents.

## **14 LEGAL PROFESSIONAL PRIVILEGE**

- 14.1 Any person seeking to assert legal professional privilege over any communications required to be produced to the Inquiry (**Privilege Claimant**) must make an application to claim privilege (**Privilege Application**).
- 14.2 The Privilege Claimant must comply with the following procedure.
- 14.3 The Privilege Claimant must clearly label or describe any communications or documents, or any part of the communications or document, over which privilege is claimed. For example:
  - (a) where the communications or documents are produced to the Inquiry in electronic form on an electronic storage device, the Confidentiality

Claimant must store the communications or documents in a folder or folders marked "Subject to Legal Professional Privilege";

- (b) where the communications or documents are produced to the Inquiry in hard copy form, the Confidentiality Claimant must provide the communications or documents in a sealed envelope marked "Subject to Legal Professional Privilege".

14.4 The Privilege Claimant must apply in writing to the Solicitor Assisting as soon as reasonably practicable after the requirement to produce is imposed but by no later than the time of production.

14.5 The Privilege Application must be made using the application form available on the Inquiry's website and supported by any affidavit evidence and written submissions relied on by the Privilege Claimant in support of the Privilege Application. Any such supporting affidavit evidence and written submissions must address the basis of the claim of privilege.

14.6 If a Court of law has previously made a finding that the communication is to be subject to legal professional privilege, the Privilege Claimant must provide the Solicitor Assisting with:

- (a) a copy of the judgment or order of that Court which contains the finding;  
and
- (b) any relevant affidavit evidence confirming there has been no waiver or loss of privilege since that finding was made.

14.7 Where a Privilege Claimant makes a Privilege Application, the Inquiry:

- (a) will not, subject to practice direction 14.9, review the communications or documents that are the subject of the Privilege Application until the Inquiry determines the application;
- (b) may require Counsel Assisting to submit responsive affidavit evidence and written submissions in reply;
- (c) will decide the Privilege Application on the papers or notify the Privilege Claimant if a hearing is required prior to such a decision being made; and
- (d) notify the Privilege Claimant in writing of the Inquiry's decision.

14.8 If the Inquiry rejects that claim, the Privilege Claimant will be required to immediately produce the subject communications or documents to the Inquiry.

14.9 The Inquiry will endeavour in all cases to determine the Privilege Application on the affidavit evidence and submissions in support without considering the subject communication, but will, if necessary, consider the communication/s or document/s to make its determination. Where the Inquiry considers it necessary to do so, it will give the Privilege Claimant an opportunity to make further written submissions before considering the subject communications.

## **15 SUPPRESSION ORDERS**

15.1 There is a significant public interest in the Inquiry's hearings being conducted in public. The Inquiry will only order documents produced to the Inquiry or evidence given before the Inquiry be suppressed if there are exceptional circumstances which justify its suppression.



- 15.2 Any person who wishes the Inquiry to make a suppression order in relation to a document produced to the Inquiry or evidence given before the Inquiry (**Suppression Applicant**) must make an application for that order (**Suppression Application**).
- 15.3 The Suppression Applicant must comply with the following procedure.
- 15.4 The Suppression Applicant must apply in writing to the Solicitor Assisting as soon as reasonably practicable. The Suppression Application must be made using the application form available on the Inquiry's website and must be supported by affidavit evidence and written submissions. Any such supporting affidavit evidence and written submissions must address:
- (a) the basis for the Suppression Application; and
  - (b) the direction sought by the Applicant from the Inquiry.
- 15.5 Where the Suppression Application relates to a document, the Suppression Applicant must clearly denote the pages, or the parts thereof, containing the material the Suppression Applicant seeks to have suppressed. For example:
- (a) where the documents are produced to the Inquiry in electronic form on an electronic storage device, the Suppression Applicant must store the documents in a folder or folders marked "For Suppression"; or
  - (b) where the documents are produced to the Inquiry in hard copy form the Suppression Applicant must, on a copy of the document:

- (i) mark the relevant pages of the document with the words “For Suppression” appearing prominently at the top of each such page; and/or
- (ii) highlight the relevant part of the page or the words or phrases in the document.

15.6 Where a Suppression Applicant makes a Suppression Application, the Inquiry:

- (a) may require Counsel Assisting to submit responsive affidavit evidence and written submissions in reply;
- (b) will decide the Suppression Application on the papers or notify the Suppression Claimant if a hearing is required prior to such a decision being made; and
- (c) will notify the Suppression Applicant in writing of the Inquiry’s decision.

## **16 EXTENSIONS OF TIME**

16.1 Any person seeking an extension of time to comply with a direction of the Inquiry (**Extension Applicant**), including any requirement to produce a statement of information or documents to the Inquiry, must make an application (**Extension of Time Application**).

16.2 The Extension Applicant must comply with the following procedure.

16.3 The Extension Applicant must apply in writing to the Solicitor Assisting as soon as reasonably practicable after the direction is made and by no later than three business days before that person is required to comply with the direction.

16.4 The Extension of Time Application must be made using the application form available on the Inquiry's website and supported by any affidavit evidence or submissions relied on by the Extension Applicant in support of the Extension of Time Application. Any such supporting affidavit evidence and written submissions must address:

- (a) the basis of the claim for an extension of time; and
- (b) the directions sought by the Extension Applicant from the Inquiry.

16.5 The Inquiry will determine the application on the papers and notify the Extension Applicant in writing of the Inquiry's decision.

## **17 OTHER PROCEDURAL MATTERS**

17.1 Any person:

- (a) who has been called as a witness before the Inquiry; and/or
- (b) who has been granted leave to appear before the Inquiry pursuant to practice direction 6; and/or
- (c) who has been granted leave to be represented before the Inquiry pursuant to practice direction 7; and
- (d) who wishes to raise a procedural or legal matter with the Inquiry, where a procedure for raising that matter is not provided for in these practice directions,

must write to the Solicitor Assisting and provide a brief outline of the submission to be made.

17.2 Where a person writes to the Solicitor Assisting pursuant to practice direction 17.1, the Inquiry:

- (a) may require the person to provide supplementary submissions and/or supporting evidence on affidavit;
- (b) may require Counsel Assisting to submit written submissions and evidence on affidavit in reply;
- (c) will consider the matter on the papers or notify the person if a hearing is required prior to such a decision being made; and
- (d) notify the person in writing of the Inquiry's decision.

## 18 FINAL SUBMISSIONS

18.1 At the conclusion of the evidence, the Inquiry will direct Counsel Assisting to prepare and deliver written submissions (**Closing Submissions**) on:

- (a) the findings that are open to the Inquiry, including findings as to:
  - (i) whether there has been a failure to provide for the good government of persons in the City of Perth's district; and
  - (ii) the prospect of such good government being provided in the future (including by reference to whether the Council and Administration has the ability to, and is likely to, do so); and
- (b) the recommendations that the Inquiry may consider appropriate, including any recommendations as to:

- (i) any steps which may need to be taken to ensure that such good government does happen in the future; and
- (ii) whether the Council should be reinstated or dismissed.

18.2 The Inquiry will direct Counsel Assisting to deliver oral submissions at the close of the Inquiry's public hearings.

18.3 The Inquiry will ensure that the Closing Submissions on the findings open to the Inquiry in practice direction 18.1(a) comprise the outer limits of any adverse findings, conclusions or comments which might be included in the Inquiry's final report to the Minister for Local Government pursuant to section 8.22 of the LGA (**Final Report**).

18.4 Any person:

- (a) who is potentially the subject of any adverse findings, conclusions or comments; and/or
- (b) whose legal rights, financial interests, personal reputation, status or livelihood may be affected by the recommendations,

will be provided with extracts of the Closing Submissions which will allow that person to know and to be able to address those potential adverse findings, conclusions, comments or recommendations and will be allowed to provide written submissions in response by or before a specified date.

18.5 The Inquiry may direct Counsel Assisting to file written submissions in response to any written submissions received pursuant to practice direction 18.4.

18.6 The Inquiry will consider the Closing Submissions, the oral submissions at practice direction 18.2 and any written submissions it receives pursuant to practice directions 18.4 and 18.5 before it produces the Final Report.

Date: 22 November 2018