

**LAND APPEAL COURT OF QUEENSLAND
PRACTICE DIRECTION 1 OF 2007
LAND APPEAL COURT**

1. This Practice Direction repeals and replaces Practice Direction 1 of 2006.
2. The purpose of this practice Direction is to clarify the procedure to be undertaken by parties participating in appeals to the Land Appeal Court.
3. In this Practice Direction the following definitions apply, unless the context otherwise indicates:
 - (a) "appeal record book" is the compilation which contains material from the primary court hearing and includes the relevant part of the transcript of evidence, exhibits and any reports and records or other material relevant for the consideration and determination of the appeal.
 - (b) "court" refers to the Land Appeal Court unless otherwise specified;
 - (c) "index" means the appeal record book index and is a concise list of documents to be included in the appeal record book;
 - (d) "Member of the Land Appeal Court" includes a Judge of the Supreme Court who is a Member of the Land Appeal Court;
 - (e) an "outline of submissions" is a concise written statement of the issues and arguments in a proceeding, which includes references to relevant pages in the appeal record book and cases and legislation relied upon by the party;
 - (f) "proceeding" includes an application to the Land Appeal Court;
 - (g) "registrar" is the Registrar or Deputy Registrar of the Land Appeal Court,
 - (h) "registry" unless otherwise stated refers to the Land Appeal Court Registry in Brisbane;
 - (i) "respondent" means any party to a proceeding, other than the appellant, and includes a respondent who is a cross-appellant.
4. In this Practice Direction, unless otherwise stated, days which fall within a court vacation are to be included for the purpose of calculating when to file or lodge court documents.

Documents filed and served in, or lodged with, the registry

5. In all cases, any document filed and served pursuant to the court rules must include in the document the name and contact details of every party to the

matter including contact details of each party's legal representatives (if any).

DOCUMENTS NECESSARY FOR APPEAL

Outline of Submissions

6. Outlines of submissions allow the court to better understand the contentions of the parties before the hearing of the appeal commences and enhance the utility of oral argument and unless otherwise provided by this Practice Direction or directed by the Land Appeal Court or registrar:
 - (a) outlines of submissions from both parties are required in every proceeding in the court in accordance with Rule 49 of the *Land Court Rules 2000*;
 - (b) outlines of submissions must ordinarily be double spaced and rendered in type no smaller than 1.8mm (10 point) and be no more than ten (10) pages in length; if a party is of the opinion that their outline of submissions will exceed ten pages, the registrar should be informed in writing including reasons;
 - (c) the name of the person who prepared the outline of submissions, the name of the party on whose behalf it was prepared and the date of lodgement must be stated in the outlines of submissions;
 - (d) four copies of the outline of submissions must be lodged with the registry by each party and an extra copy must be served on all parties; and
 - (e) the court may require the outlines of submissions to be expanded or supplemented by further submissions.
7. If a party to an appeal lodges an outline of submissions outside the designated time period:
 - (a) the party must provide the registry with a explanation as to why the outline of submissions is being filed after the due date;
 - (b) the written explanation may be contained either within the outline of submissions or in a separate document;
 - (c) the late outline of submissions may not be accepted for filing in the registry without such explanation;

List of authorities

8. In all appeals four copies of each party's list of authorities must be lodged by that party with the registry in accordance with Rule 49 of the *Land Court Rules 2000* and must contain two sections:

- (a) Part A which is a list of all cases and legislation upon which the party definitely intends to rely; and
 - (b) Part B which is a list of all other cases and legislation to which the party might refer, but upon which the party will not necessarily rely.
9. Each party will provide to the court three copies of each authority listed in Part A of the list of authorities, unless:
- (a) no later than two clear days prior to the hearing, the party notifies the registrar in writing that financial hardship will be caused to that party; and
 - (b) upon receipt of such notification, the registrar exercises his or her discretion to waive the provision of such copies.

The parties should consult to avoid duplication of authorities in the lists provided.

General provision regarding appeal record book

10. In relation to the preparation of an appeal record book, unless otherwise provided by this Practice Direction or directed by the court or registrar or other person authorised by the court:
- (a) appellants in all appeals are responsible for the preparation of the appeal record book except in exceptional circumstances or cases of financial hardship where the registrar has made an order that the registry prepare the record book;
 - (b) the appeal record book (including the appeal record book index) must comply with the "Land Appeal Court Guidelines for Preparation of Appeal Record Books", copies of which can be obtained from the registry;
 - (c) within 6 weeks from the filing of the notice of appeal the appellant must lodge a draft index for the appeal record book.
To facilitate this:
 - (i) the appellant is to provide to each respondent the draft index for the appeal record book and the respondent is to provide to the appellant a response to the draft index. In the event that agreement cannot be reached about the index, its contents will be determined by the Registrar.
 - (ii) in all cases, the contents of the appeal record book must be limited to the material necessary for the consideration and determination of the appeal.

- (iii) the judgment or order, reasons for judgment and copy of the notice of appeal or originating application from the primary court and the notice of appeal to the Land Appeal Court, must be included in the appeal record book;
 - (iv) the outlines of submissions prepared for the court hearing will not be included in the appeal record book;
 - (v) a copy of the appeal record book index is to be placed at the beginning of every volume of the appeal record book and must describe fully the nature of each document, including each annexure and exhibit attached to the document giving a page number for each document;
- (d) the appeal record book must not include more than one copy of the same document;
 - (e) the appeal record book must be filed within 10 weeks of the filing of the notice of appeal;
 - (f) four copies of the appeal record book must be lodged with the registry and one copy must be served on every party to the appeal;
 - (g) the registrar may refuse the filing of appeal record books which fail to comply with this Practice Direction and with the court guidelines;

Time fixed for appeal hearing

- 11. A time may be fixed for the hearing of a proceeding at any time, but where appropriate, regard will be had to the period needed for preparation of the appeal record book, any prior request by a party that particular dates not be allocated and any other relevant factors.

Listing date

- 12. A listing date set by the registry is final, subject only to alteration by the court or registrar.

Direction to parties

- 13. The court or registrar, or other person authorised by the court, may, at any time:
 - (a) extend or abridge time in relation to the filing of Practice Direction documents;
 - (b) order further or different directions in an appeal proceeding; and
 - (c) give directions upon or without an application by a party.

Oral argument

14. Unless otherwise provided by this Practice Direction, or directed by the court:
- (a) oral argument will ordinarily be restricted to issues raised by the outlines of submissions, and may be restricted to specific issues so raised; and
 - (b) oral argument may be confined to time periods set either generally or for particular kinds of proceedings or for a particular proceeding.

Application for dismissal for want of prosecution

15. Where a party files an application for dismissal for want of prosecution based on the failure of another party to comply with the direction of the court or registrar:
- (a) the application will not be accepted by the registry unless fourteen days have passed since the other party failed to comply with the direction; and
 - (b) the party must give the other party five (5) clear court days notice in writing that the party intends to bring such an application.

Appeal heard on the record only

16. (a) An appeal is ordinarily heard on the record of the evidence given at the primary court hearing and any other evidence or matter not contained in the record is ordinarily treated as irrelevant and must not be referred to in either the outline of submissions or at the hearing of the appeal.
- (b) If a party wishes the court to consider evidence which does not appear from the record, it is necessary for the party to apply to the court for leave to adduce such evidence under s.56(2) of the *Land Court Act 2000*.

Use of mediation prior to the appeal hearing date

17. (a) In some appeals, mediation may be appropriate prior to the listing of the appeal.
- (b) An appeal may be referred to mediation with the consent of all the parties to an appeal or by order of the court, which may be made on the application of a party or without such application.

TELEPHONE AND VIDEO LINKS IN THE LAND APPEAL COURT

18. Where special circumstances exist, a party to a proceeding may appear before or make submissions to the court by telephone or video link.

19. A party may request that telephone or video link facilities be used in a hearing by applying to the registrar in writing, not less than 14 days prior to the hearing, indicating special circumstances justifying the telephone or video link hearing.
20. The court will decide if special circumstances are established.
21. Without limiting the term, "special circumstances" may apply where there is an appreciable economic benefit or where substantial inconvenience will be avoided through the use of a telephone or video link.
22. The registrar will advise the parties in writing, prior to the hearing, if a hearing is to utilise the telephone or video link facilities.

M J White
Justice of the Supreme Court

JJ Trickett
President of the Land Court

14 November 2007