

SUPREME COURT OF QUEENSLAND PRACTICE DIRECTION NO 17 OF 2012

CASE FLOW MANAGEMENT – CIVIL JURISDICTION

- 1 This practice direction repeals and replaces Practice Direction No 4 of 2002 and commences on the date of publication.
- 2 **Objectives**
 - 2.1 [Rule 5](#) of the Uniform Civil Procedure Rules (UCPR) provides:
 - (a) The purpose of these rules is to facilitate the just and expeditious resolution of the real issues in civil proceedings at a minimum of expense.
 - (b) Accordingly, these rules are to be applied by the courts with the objective of avoiding undue delay, expense and technicality and facilitating the purpose of these rules.
 - (c) In a proceeding in a court, a party impliedly undertakes to the court and to the other parties to proceed in an expeditious way.
 - (d) The court may impose appropriate sanctions if a party does not comply with these rules or an order of the court.
 - 2.2 This practice direction establishes a system to facilitate the just and timely disposition of proceedings, with the minimum necessary commitment of resources by the court and litigants, by monitoring the progress of individual proceedings against predetermined timelines, and intervening when a proceeding is not progressing satisfactorily.
 - 2.3 The system is also designed to focus attention on the early disposition of proceedings utilising the procedures of chapter 9 of the Uniform Civil Procedure Rules (“Ending Proceedings Early”) which provides for:
 - (a) judgment by default;
 - (b) summary judgment;
 - (c) discontinuance and withdrawal;
 - (d) alternative dispute resolution processes; and
 - (e) offers to settle.
 - 2.4 This practice direction is based on an expectation that most proceedings will be ready for trial or otherwise resolved within 180 days of the filing of the defence.

- 2.5 If the proceeding is not ready for trial or otherwise resolved within that timeframe, the court will impose directions to ensure the proceeding is prepared for trial with appropriate sanctions for non-compliance.

3 Application of the practice directions and definitions

- 3.1 The practice direction applies to:
- (a) civil proceedings instituted by claim (including renewal of a claim) in the Brisbane Registry;
 - (b) such other registries as may be directed; and
 - (c) such other proceedings as the court or a judge may direct.
- 3.2 It does not apply to proceedings on a separate list (eg the Supervised Cases List, the Commercial List).
- 3.3 “Deemed resolved” – as used in this practice direction means that the proceeding is in abeyance and no step can be taken unless and until the matter is reactivated by order of the court.
- 3.4 “Plaintiff” – includes a counter-claiming defendant or any other party having carriage of the proceeding.
- 3.5 Except as specified in this practice direction, all correspondence relating to case flow management should be sent by email only to the case flow manager (caseflowmanager@justice.qld.gov.au).

4 An overview of the system

- 4.1 The system:
- (a) sets timelines by which proceedings should progress to specific stages, for example from close of pleadings to filing of a request for trial date, and monitors the progress of proceedings against those timelines;
 - (b) provides for the identification of proceedings which do not adhere to timelines and for intervention when the default is not justified; and
 - (c) assists in identifying proceedings making exceptional demands on resources, warranting management in terms of [Practice Direction 6 of 2000](#) (Supervised Cases).
- 4.2 There shall be a case flow judge.
- 4.3 Case flow reviews shall be conducted from time to time, on the last Friday of every month or on such other date as is set by the court. The dates shall be listed in the court calendar which is available online at <http://www.courts.qld.gov.au/court-calendars>.

5 Case management notices

- 5.1 The registrar may call on the plaintiff by notice to the effect of CFM1 to show cause why the proceeding should not be deemed resolved where a request for trial date has not been filed 180 days after—

- (a) the date of filing of the notice of intention to defend; or
- (b) where multiple defendants have appeared and filed defences—the date of filing of the latest notice of intention to defend.

5.2 Notices sent pursuant to this practice direction will be sent—

- (a) to the email address provided by the party on the claim or defence or notice of change of address for service; or
- (b) if no email address is there provided—
 - (i) the first notice will be sent by mail to the address for service;
 - (ii) a party receiving a notice from the case flow manager by mail must, within fourteen (14) days of the date of issue of the notice, file a notice of address for service ([Form 8](#)) setting out an email address;
 - (iii) all subsequent notices will be sent to the email address of the party.

5.3 The plaintiff must respond to a notice to show cause within twenty-eight (28) days of the date of issue of the notice by—

- (a) filing a notice of discontinuance under [rule 309](#); or
- (b) giving written notice that the proceeding has been settled under [rule 308A](#); or
- (c) filing a request for trial date under [rule 467](#); or
- (d) justifying the failure to file a request for trial date, and proposing a plan to facilitate the timely determination of the proceeding.

5.4 If cause is not shown the proceeding will be placed on the case flow review list for directions (“directions hearing”). The parties must attend the directions hearing or the matter may be deemed resolved.

6 Proposing plans and giving of directions

6.1 Where the plaintiff elects to propose a plan under subparagraph 5.3(d), the parties must confer as to the appropriate directions which will ensure that the proceeding will be prepared for trial. The plan must be comprehensive and include specific dates for—

- (a) if no step has been taken in the proceeding for:
 - (i) 1 year—the giving of one month’s notice to every other party of the party’s intention to proceed in accordance with [rule 389\(1\)](#) of the UCPR;
 - (ii) 2 years—the bringing of an application to the court for an order that a step may be taken in accordance with [rule 389\(2\)](#) of the UCPR;

- (b) If the proceeding is within the jurisdiction of the District Court or the Magistrates Court—the transfer of the proceeding to that court (noting the date at which changes to the jurisdiction of the [District Court](#) and [Magistrates Court](#) came [into effect](#));
 - (c) amended pleadings, if necessary;
 - (d) any disclosure or further disclosure, as well as how that disclosure should be made;
 - (e) the filing of any interlocutory applications;
 - (f) an alternate dispute resolution plan, including, for example, the date for filing of a consent order for mediation and the date by which it is to occur;
 - (g) the giving of expert evidence in compliance with [Practice Direction 2 of 2005](#) and [Chapter 11, Part 5 of the UCPR](#), and in particular, for—
 - (i) the appointment of a joint expert in accordance with paragraphs 4 and 5 of the [Practice Direction 2 of 2005](#); or
 - (ii) if that Practice Direction does not apply or the parties have satisfied the court that a joint expert should not be appointed—a conclave of experts as set out in [rule 429B\(1\)](#);
 - (h) any other directions necessary to bring the matter to resolution; and
 - (i) the filing of a request for trial date or notice of discontinuance and provision that, if neither is filed, the proceeding be deemed resolved on that date. That date should be a case flow review date.
- 6.2 Except as provided in paragraph 6.3, the parties must appear at a case flow review and present to the judge a draft order which complies with paragraph 6.1.
- 6.3 If the parties wish an order to be made without the need for a directions hearing, the plan must be submitted by emailing the following to the associate of the case flow judge (associate.atkinsonj@courts.qld.gov.au), copying that email to the case flow manager (caseflowmanager@justice.qld.gov.au) and all other relevant parties to the proceeding, by 12 noon on the day before the case flow review hearing:
- (a) a draft consent order in the terms of the plan in Microsoft Word format;
 - (b) if the plan does not comply with paragraph 6.1—an explanation for that non-compliance; and
 - (c) evidence of the consent of all relevant parties, and, where applicable, an explanation as to why consent of one or more of the parties to the proceeding is not required, for example because judgment has been entered against them.
- 6.4 Upon submission of a plan under paragraph 6.3, a judge or registrar may:

- (a) give directions in terms of the plan, or otherwise as appropriate, to effect the timely determination of the proceeding; or
- (b) require the parties to appear before the judge in court on a case flow review for directions to be made.

6.5 If a party is unable to comply with the directions made, that party may apply to amend the order giving directions for the proceeding by emailing the following to the associate of the case flow judge (associate.atkinsonj@courts.qld.gov.au), copying that email to the case flow manager (caseflowmanager@justice.qld.gov.au) and all other relevant parties to the proceeding, by 12 noon on the day before the date when the direction must be followed or the date on which the proceeding will otherwise be deemed resolved:

- (a) a draft consent order in the terms of the amended plan in Microsoft Word format, which vacates any previous orders with which the party is unable to comply, and proposes new orders;
- (b) if the amended plan does not comply with paragraph 6.1—an explanation for that non-compliance;
- (c) evidence of the consent of all relevant parties, and, where applicable, an explanation as to why consent of one or more of the parties to the proceeding is not required, for example because judgment has been entered against them;
- (d) an explanation for the proposed amendment; and
- (e) a copy of the previous order(s) which the new draft consent order proposes to amend.

6.6 Upon submission of an amended plan under paragraph 6.5, a judge or registrar may:

- (a) give directions in terms of the amended draft order, or otherwise as appropriate, to effect the timely determination of the proceeding; or
- (b) require the parties to appear before the judge in court for directions to be made.

7 Consequences of Non-Compliance

7.1 If a request for trial date is not filed by the date set out in directions made under this practice direction, the proceeding will be deemed resolved without the need for further order.

7.2 Non-compliance with this practice direction or directions made under it may, on the application of a party, or at the judge's own initiative, also result in:

- (a) an order pursuant to [rule 371\(2\)](#);
- (b) an order pursuant to [rule 374\(5\)](#);
- (c) a non-complying party being deprived of the costs of late compliance;

- (d) a non-complying party being ordered to pay the other party's costs thrown away by reason of the non-compliance, which may be fixed and payable forthwith;
- (e) the proceeding being listed for trial notwithstanding non-compliance.

8 Restoring proceedings deemed resolved

8.1 A proceeding deemed resolved may be reactivated by an application by any party before the case flow judge supported by affidavit material, which must:

- (a) explain and justify—
 - (i) the circumstances in which the proceeding was deemed resolved;
 - (ii) any delay; and
 - (iii) any failure to comply with court directions; and
- (b) address—
 - (i) any potential prejudice caused by the delay;
 - (ii) the parties' capacity to prepare the case for trial in a timely way; and
 - (iii) whether a trial is required for resolution of the proceeding; and
- (c) propose a plan to facilitate its timely determination in accordance with paragraph 6.1.

8.2 An application for reactivation may also be heard and determined at the same time as an application made by a party under [rule 374](#).

8.3 The judge may then:

- (a) make an order pursuant to [rule 371\(2\)](#);
- (b) make an order pursuant to [rule 374\(5\)](#); or
- (c) reactivate the proceeding and give directions appropriate to effect its timely determination.

9 General

A judge or a registrar may give directions for the further conduct of the proceeding; for example, may, at any time, at the court's own initiative, on notice to the parties, review its progress, and give directions to facilitate the efficient and timely determination of the proceeding.



Paul de Jersey
Chief Justice
24 July 2012