

PRACTICE DIRECTION NUMBER 6 of 2015

LAND COURT OF QUEENSLAND

CASE MANAGEMENT PROCEDURES FOR COMPENSATION DETERMINATIONS UNDER THE *MINERAL RESOURCES ACT 1989*

- (1) This Practice Direction repeals and replaces Practice Direction 5 of 2013.
- (2) This Practice Direction sets out the case management procedures for the just and expeditious resolution of matters referred to the Land Court for the determination of compensation under the *Mineral Resources Act 1989* (MRA). In particular, this Practice Direction applies to:
 - (a) referrals made to the Land Court pursuant to ss 85 and 85A of the MRA in respect of the grant and renewal of mining claims; and
 - (b) referrals made to the Land Court pursuant to ss 279, 279A and 281 of the MRA in respect of the grant and renewal of mining leases.
- (3) These procedures recognise that parties may wish to negotiate a compensation agreement instead of expending time and money on the court process. Whilst the Court acknowledges that it is preferable for parties to reach agreement wherever possible, matters must be resolved in a timely manner in the interests of certainty and finality of proceedings.
- (4) The Land Court expects that, save in exceptional circumstances, or where an extension of time has been granted to file material, or where an oral hearing is required, proceedings will normally be resolved within 6 months of the referral to the Court.

Parties to the Land Court Proceeding

- (5) The applicant in the Land Court proceeding is the party who requested that the issue of compensation be referred to the Land Court for determination. This will usually be the applicant for or holder of the mining claim or mining lease (the mining tenure applicant / holder). In such cases, the landowner will be the respondent to the proceeding.
- (6) If the landowner has requested the referral to the Land Court (see ss 85(5) and 281(1) of the MRA), the landowner will be the applicant to the proceeding and the mining tenure applicant / holder will be the respondent.
- (7) In cases where neither party has requested the referral and the Department of Natural Resources and Mines is compelled to refer the matter to the Land Court after 3 months (see ss 85(12), 85A, 279(5) and 279A of the MRA), the mining tenure applicant / holder will be the applicant to the proceeding and the landowner will be the respondent.

Procedures

- (8) Upon receipt of an application or referral to determine compensation, the Land Court Registry will send the parties an acknowledgment letter.

- (9) Within twenty-eight (28) days after the date of the acknowledgment letter, the applicant must file in the Court and serve on the respondent:
 - (a) a compensation statement (refer to paragraphs 16 & 17 below);
 - (b) any supporting affidavits or statutory declarations; and
 - (c) a hearing statement (refer to paragraph 18 below).
- (10) Within twenty-eight (28) days after being served with the applicant's material, the respondent must file in the Court and serve on the applicant:
 - (a) a compensation statement (which should also identify any aspects of the applicant's compensation statement with which the respondent agrees or disagrees and the reasons for any disagreement);
 - (b) any supporting affidavits or statutory declarations; and
 - (c) a hearing statement.
- (11) If the applicant does not serve any material in accordance with paragraph (9) above, the acknowledgment letter from the Land Court Registry will nominate a due date for the respondent's material which will be no less than 28 days from the last day of the applicant's 28-day period.
- (12) Within seven (7) days after being served with the respondent's material, the applicant is to file in the Court and serve on the respondent any material in reply to the respondent's material.
- (13) If the respondent does not serve any material in accordance with paragraph (10) above, the applicant must notify the Court as soon as possible and no later than the due date nominated in the acknowledgment letter from the Land Court Registry.

Extensions of Time for Filing Material

- (14) If either party desires further time to comply with these procedures, that party must immediately contact the other party and seek their written consent. A written request for an extension of time, together with a copy of the other party's consent, should then be forwarded to the Court **before** the relevant due date. If the other party does not consent to the extension, a written request can still be made to the Court and the Court will determine whether it is appropriate in all the circumstances.
- (15) The due dates identified in the acknowledgment letter from the Land Court Registry remain set until formally changed by the Court.

Compensation Statement

- (16) A "compensation statement" means a statement detailing the amount of compensation the party considers the Court should determine having regard to:
 - (a) in the case of a mining claim – the criteria in s 85(7) and (8) of the MRA; or
 - (b) in the case of a mining lease – the criteria in s 281(3) and (4) MRA.
- (17) The compensation statement should address **all** applicable criteria in the relevant MRA provisions, including:

- (a) The total amount of compensation, supported by:
 - (i) sufficient information on how the amount is calculated;
 - (ii) sufficient information about any losses or expenses claimed, including management costs; and
 - (iii) sufficient evidence in support of the amount claimed for each head of compensation, in particular, valuation and economic evidence in support of each head.
- (b) Details of what the proposed mining area:
 - (i) is currently used for; and
 - (ii) is otherwise capable of being used for.
- (c) Details of how the proposed mining operations will affect the current and prospective uses of the proposed mining area; and
- (d) Any other material a party considers relevant.

Hearing Statement

- (18) Each party is required to submit to the Court a “hearing statement” – that is, a short statement advising whether the party wishes the matter to be dealt with by the Court:
 - (a) on the papers – which means that the Court will make a decision based on the written material supplied by the parties without an oral hearing;

OR

 - (b) by way of an oral hearing – where the parties will have an opportunity to cross-examine the witnesses of the other party and make oral submissions to the Court.

What happens if the parties do not submit any material to the Court?

- (19) If either party fails to file and serve material in accordance with these procedures, it will be presumed that the party does not wish to make any submissions to the Court.
- (20) Where no material is filed by the parties, the parties will be notified of the Court’s intention to dispose of the matter under r 36A of the *Land Court Rules 2000* without an oral hearing.
- (21) The Court will determine the amount of compensation by reference to the submissions which have been filed (if any), such material as is available to the Court about the subject property and the proposed mining operations and any relevant compensation determinations in the area.
- (22) The Court’s determination will be binding on the parties. The parties will be notified of the Court’s decision in accordance with r 39 of the *Land Court Rules 2000*.

What if the parties wish to negotiate a compensation agreement?

- (23) The parties are free to negotiate and conclude a compensation agreement at any time during the court process.
- (24) If an extension of time for filing material is required to facilitate negotiations, the parties must comply with the procedure for requesting an extension of time outlined in paragraph (14) above. The due dates identified in the acknowledgment letter from the Land Court Registry otherwise remain set until formally changed by the Court.
- (25) The Court may grant an extension of time for filing material for any period up to a maximum of three (3) months. Thereafter, the Court will not grant any further extensions of time, save in exceptional circumstances.
- (26) If the parties reach agreement on the amount of compensation payable, each party must advise the Court in writing that agreement has been reached. The Court will close its file upon receiving confirmation from the Department of Natural Resources and Mines that an agreement has been filed.

Carmel MacDonald
President
9 September 2015