

## PRACTICE DIRECTION NUMBER 2 of 2017

### LAND COURT OF QUEENSLAND

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#### GUIDELINES FOR THE USE OF CONCURRENT EVIDENCE

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##### Background

1. This practice direction is issued pursuant to s 22(2) of the *Land Court Act 2010*.
2. It outlines the procedure that will apply where a direction is made for expert evidence to be taken concurrently.
3. It supplements the procedures for meetings of experts, Joint Reports and Statements of Evidence set out in Part 5, Divisions 1, 2 & 3 of the *Land Court Rules 2000*. This practice direction should be read in conjunction with those provisions.
4. Concurrent evidence involves two or more experts in the same or closely related fields giving evidence at the same time.
5. The use of concurrent evidence is intended to:
  - enhance the Court's appreciation and understanding of expert evidence;
  - assist expert witnesses to fulfil their role as impartial advisors to the Court; and
  - enhance the efficient operation of hearings.
6. At any stage of the case, a party may request a direction that expert evidence is taken concurrently at the hearing. The decision on that request will be made by the Member who will conduct the hearing, in consultation with the parties or their representatives.
7. If a direction has not already been made, the Member who will conduct the hearing will decide at the hearing review whether to take expert evidence in a concurrent evidence session.
8. In deciding whether to direct a concurrent evidence session, the Member will take into account, amongst other factors:
  - the nature and complexity of the issues on which expert evidence would be given;
  - the areas of expertise and level of expertise of the experts who would participate;
  - the likely impact of using concurrent evidence procedure on the length of the hearing; and
  - the views of the parties.
9. A Member may adjourn or terminate a concurrent evidence session if they consider it is in the interests of justice to do so.

## **Overview of Procedure for a Concurrent Evidence Session**

10. The experts are sworn or affirmed at the same time. They will be seated together. They should bring the Joint Report, any Statements of Evidence or other reports and any materials upon which they have relied in forming their opinion. If they have models or other electronic data they wish to demonstrate they should bring necessary equipment with them to facilitate a smooth presentation. They should advise a Court officer, in advance, of any particular information technology requirements.
11. The purpose of the session is to properly inform the Member of the experts' opinions on relevant matters. Prior to the session, the Member hearing the case will consult with the parties' representatives and any litigants-in-person to settle topics for the concurrent evidence session. This will draw upon the Joint Report but need not be confined to the areas of disagreement identified by the experts. The Member may direct that specified topics are dealt with separately, either before or after the concurrent evidence session.<sup>1</sup>
12. The Member will facilitate a discussion in which the experts, the parties' representatives, any litigants-in-person and the Member will all participate. The experts may comment on what another expert says or ask questions of each other. The parties' representatives and litigants-in-person may ask questions of any expert.
13. Usually concurrent evidence will occur with all experts present in person in court. However, a Member may approve an expert participating by telephone or videolink.

## **The Role of Participants**

### ***The Role of Parties and Their Representatives***

14. At an early stage of a case, parties and their representatives should consider the possibility of using the concurrent evidence procedure at trial.
15. It involves a departure from the traditional method of taking evidence from expert witnesses. Parties and their representatives are expected to adjust their approach accordingly. They may ask questions of all experts to ensure all relevant information and opinions are clarified and tested.
16. If a party disputes whether another party's witness is qualified to give expert opinion evidence they must notify all parties and the Court, as soon as practicable, so that question can be dealt with as a preliminary matter.

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<sup>1</sup> The Court will publish a guideline about the process for identifying topics for the concurrent evidence session following further consultation with parties and the profession.

***The Role of Experts***

17. Experts are expected to participate in the concurrent evidence session in good faith. Their duty is to provide independent expert advice to assist the Court, not to act as an advocate for a party. This obligation overrides any obligation the expert may have to any party to the case or to any person who is liable for the expert's fee or expenses.
18. Unless the Member gives leave, an expert may not:
  - a. depart from an agreed opinion expressed in a Joint Report; or
  - b. introduce factual material not disclosed in a Joint Report or a Statement of Evidence.
19. However, experts should be prepared and willing to consider and comment upon alternative factual premises and opinions available before or which emerge during the concurrent evidence session.

***The Role of the Member***

20. The Member will control the session to ensure that:
  - the topics for the session are identified;
  - all experts have an adequate opportunity to express their opinion on each topic and to comment on another expert's opinion;
  - parties' representatives and litigants-in-person are able to ask relevant questions of any expert in relation to each topic;
  - any consensus between the experts is clarified and noted.



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