

PRACTICE DIRECTION NUMBER 3 of 2017

LAND COURT OF QUEENSLAND

COURT SUPERVISED MEDIATION GUIDELINES

1. This Practice Direction, issued pursuant to s 22(2) of the *Land Court Act 2000*, defines the process for court supervised mediations. It supplements and should be read in conjunction with s 37 of the *Land Court Act 2000* and Part 6 of the *Civil Proceedings Act 2011*.
2. It does not apply to Preliminary Conferences held in appeals relating to valuations of land, which are governed by Practice Direction 2 of 2015.
3. A mediation conducted under this Practice Direction is referred to as a *court supervised mediation* and the person who conducts it is referred to as the *Mediator*.

Background

4. The Court is committed to resolving disputes in a way that is accessible, fair, just, economical and efficient.
5. The use of private mediation is an important means to fulfil that objective. Parties are encouraged to consider private mediation at any stage of any case before the Court.
6. To further the Court's objective, the Court may direct parties to engage in either private or court supervised mediation. The Mediator for a court supervised mediation will be either a Member or Judicial Registrar of the Court.
7. Whether the mediation is a private or a court supervised mediation, the order is made pursuant to ss 43 and 44 of the *Civil Proceedings Act 2011*. However, this Practice Direction applies only to court supervised mediation.
8. Court supervised mediation may be ordered at any stage of any case before the Court; whether the Court is fulfilling a judicial or an administrative function.
9. In deciding whether to direct court supervised mediation, the Court will consider factors including:
 - a. the nature and scope of the issues in dispute;
 - b. the stage the case has reached;
 - c. the resources of the parties; and
 - d. the views of the parties.

Participation in the mediation

10. Participation in a court supervised mediation is under the direction and control of the Mediator. Parties are expected to participate in good faith and must not impede the mediation.¹
11. Unless the Mediator otherwise allows, a party must attend in person, with or without their legal or other representative.
12. A party will not be relieved of the requirement to attend in person unless:
 - a. they will be represented by a person with full authority to settle the case; or
 - b. if the party is a government agency, it will be represented by a person with authority to recommend the settlement for approval by an authorised delegate; or
 - c. for any other party, the Mediator is informed of the process for endorsing a settlement and, after consulting with the other parties, considers it does not present an unacceptable limitation on the mediation.
13. Where appropriate, the Mediator may allow:
 - a. other persons to also attend, such as expert witnesses; and
 - b. participation by telephone, video or other remote access.

Intake process

14. The Mediator or a court officer will contact each party to discuss arrangements for the mediation, including:
 - date, time, venue, and period allocated for the mediation (if not already fixed);
 - any special requirements (such as cultural and language, physical access, audio-visual or other IT needs);
 - who the parties wish to participate in the mediation, including expert witnesses or other advisors;
 - any requests relating to representation at the mediation (see paragraph 12); and
 - any requests about mediation arrangements made by any other party.

Confirmation of mediation process

15. Following intake, the Mediator will approve arrangements for the mediation, which will be provided in writing to the parties.
16. The arrangements will deal with any preconditions, expectations or particular requirements of the Mediator, and will include:
 - a. who will participate, how many people may attend with a party and what are their roles;
 - b. whether a party is required to provide a confidential statement about the issues raised in the case and how they would like the case to be resolved; and if so, by what date;
 - c. what other material, if any, must be provided by any party and by what date;

¹ Section 44 of the *Civil Proceedings Act 2011*.

- d. whether a party has leave to be represented by a person without authority to commit and, if so, confirmation of that party's process for endorsement of an agreement negotiated at the mediation.

Without prejudice and confidential process

17. A court supervised mediation is conducted on a without prejudice basis. Information shared and documents prepared for the mediation are governed by the law relating to without prejudice communications.
18. The Mediator, the parties, and all other participants are expected to respect the confidentiality of the mediation.²
19. If the case does not resolve at mediation, evidence may not be given at the hearing of anything done or said or any admission made at the mediation, unless all parties agree.³
20. Following completion of the mediation, whether the case is resolved or not, the Mediator must destroy all materials provided to or prepared by or for the Mediator for the sole purpose of the mediation.

Meeting separately with the parties – private meetings

21. Mediation styles and practices may differ between Mediators and between cases. Whether a Mediator holds private meetings with the parties is at the Mediator's discretion and will depend upon the nature and circumstances of the case.
22. If a Mediator does hold private meetings with the parties, the Mediator will not disclose to any other party or participant any information provided during a private meeting, without the express authority of the informing party.

Adjournment

23. A Mediator may adjourn a mediation to continue at a later date.

Agreement

24. If agreement is reached about some or all issues, the Mediator will discuss with the parties whether the agreement will be:
 - a. reduced to consent orders to be proposed to the Court;
 - b. recorded in a private agreement prepared and finalised by the parties; or
 - c. documented in some other way.
25. If the parties propose consent orders, the Member managing the case will consider the orders proposed by the parties and, if they consider it necessary to change or refine the orders, will hear from the parties before doing so.

² The Mediator is bound by a requirement of confidentiality with limited exceptions; see s 54 of the *Civil Proceedings Act 2011*.


³ Section 53 of the *Civil Proceedings Act 2011*.

Termination

26. A Mediator may terminate a mediation if:
- a. the Mediator considers there is no utility in continuing; or
 - b. the Mediator believes (on information that provides a reasonable basis for the belief) that a party has engaged or is engaging in illegal, improper or unethical conduct in the mediation, or in the case generally.
27. A Mediator is not required to give reasons for terminating the mediation.

Further conduct of the case

28. Paragraphs [29] to [35] apply if the case does not completely resolve at mediation.
29. The Mediator must file a Mediator's Certificate in the approved form.
30. After consultation with the parties, the Mediator may include in their Mediator's Certificate recommended directions for the further conduct of the case. The Member who is managing the case will consider whether to make the recommended directions and will notify the parties of their decision.
31. The parties may request the Mediator to hear and determine the case or one or more issues raised in the case. The request must:
- a. be in writing and signed by all parties;
 - b. specify what is to be determined; and
 - c. record the parties' agreement to be bound by the Mediator's determination.
32. The Mediator cannot agree to the request unless it is made by all parties.
33. The Mediator can decline the request and is not required to give reasons for doing so.
34. If the Mediator agrees to the request, the Mediator will give directions about the procedure for the case or issue(s) to be determined, including whether there will be an oral hearing or whether it will be determined on documents filed with the Court.
35. Other than as provided for in paragraphs 31 to 34, should the case proceed past mediation to hearing in the Land Court or the Land Appeal Court, the Court as constituted for the case will not include the Mediator.



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