

eTrials (Electronic Hearings)

Practice Direction 1 of 2019

A handwritten signature in blue ink, appearing to read "Peter Kingham".

President FY Kingham
Issued 25 January 2019

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Introduction

1. This Practice Direction is issued pursuant to s 22(2) of the *Land Court Act 2000* and replaces *Practice Direction 2 of 2016 “Electronic Hearings (eTrials)”* which is repealed in whole.
2. The Practice Direction explains the procedure the Court will use for the conduct and preparation of an eTrial.
3. This Practice Direction is to be applied with the objective of avoiding undue delay, expense and technicality.
4. The purposes of this Practice Direction are to—
 - a) facilitate the Court dealing with cases in a way that is accessible, fair, just, economical and expeditious;
 - b) encourage the efficient and cost-effective management of documents at all stages of litigation; and
 - c) facilitate the conduct of electronic trials.
5. Unless stated otherwise, a reference to a party or the parties includes their lawyers or agents.

Overview of eTrials

6. An eTrial is a trial conducted using computer hardware and software within the courtroom which allows all documentary evidence to be viewed in electronic form by the Court and by those parties involved in the trial. It has the features set out below.
 - a) Documents within an eTrial portal are fully searchable. This means keywords and phrases within relevant documents can be quickly and easily searched. This assists parties in the preparation of their case and, where relevant, negotiations, as well as providing easy access to documents during the hearing.
 - b) All parties, including remote and regional participants have 24-hour real time access to relevant documents before and during a hearing.
 - c) eTrials significantly reduce paper handling and photocopying costs.
 - d) eTrials are compatible with commercial document management and case preparation systems.
 - e) Documents can be seen by all attendees at the hearing, not just those with access to hardcopies.
7. The earlier a case is identified for an eTrial the more likely it is that–
 - a) costs will be reduced through a streamlining of Court processes; and
 - b) parties will get the full benefit of the ease of access to electronic documents.
8. At the first directions hearing, the Court will consider, and the parties should be prepared to address, whether the case should proceed as an eTrial.
9. The Court will consider directing an eTrial in all matters, taking into account relevant considerations, including–
 - a) the likely length of the trial;
 - b) the number of witnesses, including expert witnesses;
 - c) the potential number of documents;
 - d) whether all parties to the proceedings have the ability to produce and receive documents in PDF form;
 - e) whether one or more parties are located outside of Brisbane;
 - f) whether the costs of an eTrial can be easily absorbed in a discovery phase in which documents exchanged are already in electronic format; and
 - g) the convenience of the Court.

The eTrial portal

10. The Court will establish and maintain the eTrial portal for any case directed to eTrial.
11. Access to the eTrial portal is limited to recipients of an access link.
12. A party may nominate more than one recipient of an access link. The Principal Registrar will ask each party to provide the email addresses for any recipients.
13. A recipient's access is restricted to upload, read and download access prior to a hearing, and read and download access only during and after a hearing. Once a hearing commences, no party can upload, delete or alter documents on the eTrial portal.
14. Any type of document¹ can be added to the eTrial portal, provided it complies with paragraph 21 of this Practice Direction.

¹ Document is defined in the *Evidence Act 1977* Sch 3.

THE ETrial PROCESS BEFORE THE HEARING

The eTrial process before the hearing

PRE-HEARING CONFERENCE

15. The Principal Registrar will convene a pre-hearing conference to settle the arrangements for the eTrial.
16. Parties must provide the pre-trial checklist² to the Land Court Registry at least five business days prior to the pre-hearing conference.
17. At the pre-hearing conference, the Principal Registrar will—
 - a) discuss the eTrial portal and, if possible, demonstrate it to the parties; and
 - b) discuss the parties' proposals for the format of the documents and the document ID numbering convention.
18. The Principal Registrar will decide the arrangements for the eTrial, if they are not agreed at the pre-hearing conference.
19. If there are no areas of disagreement between the parties in relation to the conduct of an eTrial the parties may request the Principal Registrar to vacate the pre-trial conference by providing—
 - a) the pre-trial checklist; and
 - b) a consent request for the pre-trial conference to be vacated.
20. If the Principal Registrar approves the parties' proposed arrangements for the eTrial, the Principal Registrar may vacate the pre-hearing conference.

DOCUMENT FORMAT

21. Unless otherwise approved by the Principal Registrar, a document for use in an eTrial must be in a text-searchable unrestricted PDF file. However, if the file is an image, audio or video file, the Principal Registrar must approve the format in which it will be provided.

² See appendix A.

THE ETrial PROCESS BEFORE THE HEARING

DOCUMENT NUMBERING

22. A document ID is the unique identifier for the document, which allows each document on the eTrial portal to be located and cited.
23. Each document (but not each page of a document) will have a document ID.
24. If the parties do not agree on the numbering convention for the documents at or prior to the pre-hearing conference, the Principal Registrar will decide the number convention for the case.

UPLOADING DOCUMENTS

25. Unless otherwise directed, parties must upload³ all documents they wish to access during the hearing, no later than five business days prior to the date of the hearing review.
26. A party may request assistance from the Court in uploading their documents.
27. Whenever a document is uploaded, the parties will receive notice through the eTrial portal.

CONFIDENTIAL DOCUMENTS

28. A party must not upload confidential documents to the eTrial portal.
29. If a document has been disclosed subject to directions to preserve its confidentiality, the document can only be uploaded to the eTrial portal by the Court, and subject to case-specific arrangements to maintain confidentiality, either as agreed between the parties and the Principal Registrar or as directed by the President or Member presiding at the hearing.

³ Currently the Court's eTrial software will allow a party to upload up to 100 documents at a time.

THE ETRIAL PROCESS BEFORE THE HEARING

ENSURING THE ACCURACY OF THE ETRIAL PORTAL

30. Each party must provide the Principal Registrar with a hearing documents index⁴ in Excel format at least five business days prior to the hearing review.
31. The hearing documents index must include any document the party has uploaded to the eTrial portal.
32. The Principal Registrar will check that all documents referred to in each parties' hearing documents index have been uploaded to the eTrial portal. If any of those documents have not been uploaded, or if there is any inconsistency between the index and the eTrial portal, the Principal Registrar will raise this with the relevant party so they may address the inconsistency.

⁴

See appendix B.

THE ETrial PROCESS DURING THE HEARING

The eTrial process during the hearing

UPLOADING DOCUMENTS

33. Once a hearing commences, the parties' access to the eTrial portal will be limited to read and download only.
34. The Associate to the President or Member presiding at the hearing is responsible for managing the eTrial portal during the hearing. The Associate may make any changes to documents and upload any additional documents as agreed by the parties or as otherwise directed by the President or Member presiding.
35. If a party wishes to show a new document to a witness before it has been uploaded to the eTrial portal, they must discuss this with the Associate beforehand, so arrangements can be made to display it in the courtroom.
36. If a new document is admitted into evidence during the hearing,⁵ the Associate will upload it to the eTrial portal as soon as practicable and, if the hearing has not concluded, before the hearing resumes.
37. Documents to be uploaded during the hearing must be provided to the Associate in the following way–
 - a) documents with a file size of under 10MB may be emailed to the Associate; or
 - b) documents with a file size of 10MB or greater must be provided to the Associate by USB or portable hard drive.

REFERRING TO DOCUMENTS

38. When referring to a document during a hearing, parties must cite the document ID in full, followed by the digital page number⁶ and any paragraph numbers.

⁵ This allows a party to introduce a document during a witness' evidence without prior agreement or order.

⁶ This is sometimes referred to as a "soft page number".

THE ETrial PROCESS DURING THE HEARING

TENDERING EXHIBITS

39. Uploading a document to the eTrial portal does not make the document evidence in a hearing, unless there is a direction to that effect.⁷
40. If a party wants to tender a document on the eTrial portal as an exhibit, they must tender it and, if it is admitted into evidence, the Associate will mark the document as an exhibit on the eTrial portal.

⁷ E.g. Practice Direction 4 of 2018, *Procedure for Mining Objection Hearings*, provides each document in the application material in a mining objection hearing will be marked as an exhibit: see [36].

THE ETrial PROCESS AFTER THE HEARING

The eTrial process after the hearing

41. The eTrial portal will be retained for use in the event of an appeal against, or judicial review of, the decision or a remitted hearing.
42. The parties' access to the eTrial portal will be removed–
 - a) if the case resolves before hearing, when the file is closed; or
 - b) after any relevant appeal period has expired.

APPENDIX A

Appendix A

CASE INFORMATION

	Court file number:	
	Party type: (e.g. plaintiff, applicant, respondent, appellant etc.)	
	Party name:	
	Presiding Member:	
	Trial date:	
	Expected duration of trial:	Days
	Has the Member directed an eTrial?	YES NO

REPRESENTATION INFORMATION

	Firm name:	
	Solicitors' names and contact details:	1.
	Name:	
	Phone:	
	Mobile:	
	Email:	
		2.
	Name:	
	Phone:	
	Mobile:	
	Email:	

APPENDIX A

	Counsels' names and contact details: Name: Phone: Mobile: Email:	1.
	Name: Phone: Mobile: Email:	2.
	Technical (e.g. litigation support) contact details: Name: Phone: Mobile: Email:	1.

PROPOSED ARRANGEMENTS FOR ETRIAL

	Proposed numbering convention for document IDs (each document, not each page, must have a unique document ID).	
	Proposed format for images, audio and video files.	

