

PRACTICE DIRECTION NUMBER 8 OF 2023

SUPREME COURT OF QUEENSLAND

CLASS ACTIONS LIST

Purpose and application

1. Representative proceedings under part 13A of the *Civil Proceedings Act 2011* (Qld) (**Act**), commonly described as class actions, present procedural issues and complexities.
2. This Practice Direction is designed to facilitate the management of representative proceedings and assist in their prompt and efficient resolution.
3. This Practice Direction applies to:
 - (a) representative proceedings under part 13A of the Act commenced in the Supreme Court of Queensland; and
 - (b) representative proceedings which have already been commenced, by order of the Chief Justice.
4. Further to paragraph 3, where a representative proceeding is or has been commenced in the Central, Northern or Far Northern region of the Supreme Court of Queensland:
 - (a) the proceeding will be managed in accordance with this Practice Direction, using audio-visual means where necessary; and
 - (b) the trial of the proceeding will take place in the region in which the proceeding was commenced, subject to any other order of the Senior Judge Administrator.
5. Subject to part 13A of the Act, the *Uniform Civil Procedure Rules 1999* (Qld) (**UCPR**) apply to representative proceedings. In this Practice Direction, a reference to a part or section is to a part or section of the Act; and a reference to a rule is to a rule in the UCPR.
6. Words and expressions in this Practice Direction have the meanings given to them in s 103A.
7. The aim of this Practice Direction is to facilitate the just and expeditious resolution of the real issues in representative proceedings at a minimum of expense by ensuring that the issues in contest are identified at an early date and that representative proceedings are not unnecessarily delayed by interlocutory disputes.
8. To provide maximum flexibility in bringing representative proceedings to trial and their prompt disposal at trial, the provisions of the following Practice Directions will not apply to a representative proceeding:

- (a) Practice Direction 11 of 2012 (Supervised Case List);
- (b) Practice Direction 10 of 2011 (Use of technology for the efficient management of documents in litigation); and
- (c) Practice Direction 1 of 2023 (Commercial List),

except to the extent the Class Actions List Judge managing the proceeding orders to the contrary.

- 9. Any practitioner who anticipates problems in complying with any aspect of this Practice Direction is to raise the matter with the Court as soon as practicable to comply with obligations imposed by rule 5.
- 10. This Practice Direction commences operation on 22 March 2023.

Class Actions List

- 11. The Chief Justice, in consultation with the Senior Judge Administrator, will assign two judges to be Class Actions List Judges.
- 12. The Registrar will appoint a Class Actions List Manager to assist in the management of proceedings commenced under part 13A.
- 13. The Class Actions List Manager will keep a list of all proceedings commenced under part 13A.

Commencement of proceedings

- 14. A representative proceeding is to be commenced by claim in accordance with the Act and the UCPR.
- 15. In addition to the requirements of r 22 and r 23, the claim must comply with the requirements of s 103F(1), namely:
 - (a) It must describe or otherwise identify the group members, and may do so by name or characteristic;
 - (b) It must state the nature of the claims made and the relief sought by the representative party on behalf of the group members, and may state any relief sought on his or her own behalf; and
 - (c) It must state the questions of law or fact common to the claims of the group members that are said to arise in the proceedings.
- 16. When a representative proceeding is started, the plaintiff must email a copy of the claim and statement of claim to the Class Actions List Manager (classactionslistmanager@justice.qld.gov.au), together with the known contact details of the other parties to the proceeding.
- 17. The claim must also contain a notation that the proceedings will be listed for an initial case conference at a date to be fixed by the Class Actions List Manager.

Assignment of proceedings

18. The proceeding will be placed on the Class Actions List and a Class Actions List Judge will be assigned to manage the proceeding.
19. The proceeding will be made returnable for an initial case conference before the Class Actions List Judge to whom it has been assigned.
20. Subject to any direction from time to time by the Senior Judge Administrator, the Class Actions List Judge will manage the proceeding and determine all interlocutory applications until the proceeding is ready for trial.
21. A trial judge will be allocated to conduct the trial of any common questions that may arise.
22. If appropriate or necessary, the proceeding may be further managed by the Class Actions List Judge in respect of directions for the determination of any remaining questions, following the trial.

Case conferences

23. A Class Actions List Judge will manage a representative proceeding by case conferences. A case conference is a more informal procedure than a directions hearing. A case conference can, if appropriate, take place by video link or by telephone.
24. At a case conference, each legal representative must be prepared to discuss with the Class Actions List Judge the best method of bringing the case to a hearing.
25. There will be an initial case conference and subsequent case conferences at times determined by the Class Actions List Judge in consultation with the parties.
26. The parties are encouraged to file a joint position paper in advance of each case conference, listing the major points the parties anticipate raising and outlining their respective positions on each issue in one to three sentences.

The initial case conference

27. Before or at the initial case conference each party is to disclose to each other party any agreement by which a litigation funder is to pay or contribute to the costs of the proceeding, any security for costs or any adverse costs order. A party may redact any information that might reasonably be expected to confer a tactical advantage on another party before disclosing a funding agreement to another party.
28. The parties should be prepared to deal with the following matters at the initial case conference:
 - (a) whether there is any dispute that the proceedings are representative proceedings for the purpose of part 13A;
 - (b) any issue about the standing of the representative party;
 - (c) any issue concerning the description of group members;

- (d) any issue concerning the identification of the common questions of fact or law in the originating process;
- (e) any other issues concerning the adequacy of the originating process;
- (f) the exchange of the most important documents relating to the claim;
- (g) a timetable for the service of defences, cross-claims and further pleadings;
- (h) disclosure and document management;
- (i) whether any security for costs will be sought and if so the amount, manner and timing of the provision of such security;
- (j) whether the matter should be referred for alternative dispute resolution; and
- (k) any protocol for communication with unrepresented group members.

Subsequent case conferences and further interlocutory steps

29. Any matters referred to in paragraph 28 above not dealt with at the initial case conference will be dealt with at a subsequent case conference or conferences at a time or times fixed by the Class Actions List Judge, after consultation with the parties.
30. The following additional matters will be dealt with at subsequent case conferences:
 - (a) fixing the date before which a group member may opt out of the proceeding (s 103G(1));
 - (b) the form and content of any notice to group members advising of the commencement of the proceeding and their right to opt out of the proceeding before the fixed date (s 103T(1)(a)) (“the opt out notice”);
 - (c) the manner of publication and dispatch of the opt out notice;
 - (d) the extent of disclosure;
 - (e) the steps necessary for the determination of the representative party’s claim and the common questions including:
 - (i) the provision of witness statements; and
 - (ii) the provision of expert evidence and the manner that such evidence will be taken;
 - (f) the establishment of any sub-group and the appointment of any sub-group representative party (s 103M);
 - (g) the date of the hearing; and
 - (h) such further directions as may be necessary.
31. Within seven days following the initial case conference or such further time as directed

by the Class Actions List Judge, the representative party is to file and serve:

- (a) a draft opt out notice;
 - (b) draft orders with respect to the proposed manner and timing of giving the opt out notice;
 - (c) information as to the anticipated costs of giving the opt out notice in the manner proposed; and
 - (d) a draft order as to the payment of costs of giving the opt out notice if the representative party is not to bear the costs.
32. The form, content and manner of distribution of the opt out notice is to be approved by the Court (s 103U(1)).

Interlocutory disputes

33. If agreement is not reached at the case conferences on any matters referred to in paragraphs 27 to 32 above or any other interlocutory matter, the Class Actions List Judge:
- (a) after hearing from the parties may make such directions as he or she thinks appropriate; or
 - (b) may direct that an application, and any necessary or appropriate supporting affidavit, be filed in respect of the matters in dispute and fix a date for an interlocutory hearing on those matters.

Mediation

34. As a matter of general practice, the Class Actions List Judge will refer a representative proceeding to mediation at an appropriate time by a referring order pursuant to r 323. The parties are to decide the timing of the mediation and the identity of the mediator.
35. If the parties do not agree on a mediator, the Class Actions List Judge will select the mediator from persons nominated by the parties. The costs of the mediation will be borne by each party equally, unless otherwise agreed or ordered.

Notice to group members

36. Subject to directions of the Court, the representative party must notify group members of any of the following matters, in a form approved by the Class Actions List Judge:
- (a) an amendment of the originating process varying the persons who may be group members (s 103H(4));
 - (b) a motion seeking dismissal for want of prosecution (s 103T(1)(b));
 - (c) an application for approval of a proposed settlement or discontinuance (s 103R);
 - (d) an application by the representative party for leave to settle or withdraw (ss 103S and 103T(1)(c));

- (e) the payment of money into court (s 103T(3));
- (f) the need for proof of individual claims in respect of a fund (s 103V(4));
- (g) the constitution of a fund (s 103W(3)(a)); and
- (h) any matter the court orders be notified to group members (ss 103H(4)(a) and 103T(5)).

Issues remaining for the determination of the common questions

37. If any issues remain to be decided after determination of the common questions, the Class Actions List Judge shall give direction as to the disposal of the remaining issues.

Third party access to Court files

38. Unless otherwise ordered, a third party may access documents on the Court file in accordance with the UCPR.

Communications with the Court

39. At all stages of the proceeding, a party may communicate with the Court by email to the Associate to the Class Actions List Judge with a copy to the Class Actions List Manager (classactionslistmanager@justice.qld.gov.au) and all other parties. A party must confine these communications to uncontroversial matters and matters of procedure, such as a date or time for a case conference.
40. A party is not to communicate with the Court about any matter of substance or make submissions on any disputed issue unless the court has directed or invited the party to do so, or the party has the permission of all other parties to do so.
41. Nothing in this Practice Direction alters the implied undertaking of a party to the Court and to the other parties to proceed in an expeditious way (r 5(3)). Nor does it alter the obligation of a party or a legal representative to avoid procedural unfairness and ensure the impartiality and integrity of the Court is not undermined by inappropriate communications with the Court.

Repeal

42. Practice Direction 2 of 2017 is repealed.



Helen Bowskill
Chief Justice
22 March 2023