

# PRACTICE DIRECTION NUMBER 5 OF 2016

## DISTRICT COURT OF QUEENSLAND

This Practice Direction supersedes Practice Direction No 5 of 2001

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### APPEALS

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#### 1. Introduction

- a) The purpose of this Practice Direction is to assist the District Court, the profession and unrepresented litigants in the efficient determination of Appeals.
- b) This Practice Direction applies to all Appeals to the District Court of Queensland under any legislation including a situation where there is a right to have a matter heard and determined de novo by a District Court; it applies to Applications for Leave to Appeal or Notices of Appeal subject to Leave as if they were Appeals.
- c) This Practice Direction operates except where any Act or Regulation or Rule in relation to a particular Appeal or category of Appeals to the District Court provides to the contrary.
- d) This Practice Direction operates subject to any direction given in particular proceedings by a Judge.
- e) An Appeal does not operate to stay enforcement of a decision unless a legislative provision provides otherwise or unless a Judge of the District Court otherwise orders.
- f) Practitioners and unrepresented litigants should be alert to situations where some form of Notice of Appeal other than Form 96 or Form 97, the approved forms required by the *Uniform Civil Procedure Rules*, is required by or under the Act providing the right of Appeal being exercised, as is the case for example with an Appeal pursuant to s.222 of the *Justices Act 1886*.
- g) When a Notice of Appeal is filed in the District Court or lodged with the Magistrates Court under s.222 of the *Justices Act 1886*, by a person who is not legally represented, the Registrar of the court where the Appeal is filed or lodged, must provide a copy of this Practice Direction to the appellant.
- h) Persons wishing to Appeal should consult the relevant legislation for any applicable time limit.
- i) A copy of the Rules, approved forms and this Practice Direction are available on the Queensland Courts Website as follows:

[www.courts.qld.gov.au/practice/legislation/default.htm](http://www.courts.qld.gov.au/practice/legislation/default.htm)  
[www.courts.qld.gov.au/practice/pracdir/further.htm](http://www.courts.qld.gov.au/practice/pracdir/further.htm)

## 2. **Outline of Argument**

“Outline of Argument” means a written statement of the issues and arguments in proceedings, which incorporates the following:

- A concise, logical statement of any factual conclusions upon which it is contended that the District Court Judge should proceed which are different from or additional to the findings made in the decision under Appeal, together with the reasons why the District Court Judge should form a factual conclusion sought including precise references to the evidence relied upon in connection with each disputed factual conclusion;
- a concise logical summary of submissions, including reference to all statutory provisions, citation of authorities and passages and previous decisions or other material relied upon;
- a list of all documents including exhibits which the party may wish to rely on.

### Appellant’s Outline

Within 28 days of filing the Notice of Appeal the appellant **must** file and serve on any respondent who has filed a notice of address for service an outline of argument on behalf of the appellant.

An Appeal will not be given a date for hearing until the outline of argument has been filed unless a Registrar directs to the contrary.

### Respondent’s Outline

Within 28 days of the service of the outline of argument on behalf of the appellant, any respondent wishing to contest the Appeal **must** file and serve on the appellant or the solicitors for the appellant and any other respondent who has filed a notice of address for service, an outline of argument on behalf of the respondent.

## 3. **Transcript**

In the absence of any other order of the Court the onus of obtaining a copy of the transcript and other documents in the custody of the court or entity from which the Appeal is brought lies upon the parties.

## 4. **Registrar’s Directions and Conference**

Unless there is a specific prohibition in an Act, Regulations or Rules or an order of the Court the Registrar may, if considered appropriate or if a party requests, make a direction that:

- a) A party files a document.
- b) The time in relation to the filing of a document be extended or abridged.
- c) The parties attend at a conference with the Registrar to settle or clarify outstanding steps to progress the determination of the Appeal including any issue regarding a variation in the time given as the estimate of hearing in the Certificate of Readiness.

Under Rule 452(2) (UCPR) a Registrar may constitute the Court for the purposes of hearing and determining an application for such direction.

Any failure to comply with any part of this Practice Direction or with a direction made by the Registrar under r.789 (UCPR) may result in the Appeal being listed by reference of a Registrar under r.982 (UCPR) before a Judge and consequently:

- (i) an order for costs being made against the party at fault; and/or
- (ii) the Appeal being struck out.

Any party may apply to a Judge for a special direction or such other order as may be necessary to facilitate the proper hearing and determination of the Appeal.

## **5 Certificate of readiness**

Within fourteen days after service of the outline of argument on behalf of the respondent, or within forty-two days of service of the outline of argument on behalf of the appellant, the parties or their solicitors as the case may be must sign and file in the registry a Certificate of Readiness in Form 98 complying with r790 UCPR.

## **6. Setting hearing date**

Upon the filing of a Certificate of Readiness containing an estimate of the duration of hearing the registrar may list the appeal for hearing: -

- (a) Short Appeals (other than Criminal Appeals under s.222 of the Justices Act 1886) will be ordinarily heard by the Judge hearing applications to court.

In the Brisbane District Court:

- (i) Appeals (other than Appeals under s222 of the *Justices Act 1886*) with a time estimate not exceeding two hours may be treated as short appeals and will ordinarily be heard by the Judge hearing applications on any day of the week

- (ii) Criminal Appeals under s222 of the *Justices Act* 1886 with a time estimate not exceeding two hours may be treated as short appeals to court and will be listed by the Registrar or in accordance with the direction of a judge.
- (b) Long Appeals will be dealt with as civil matters, and upon the filing of the Certificate of Readiness signed by on behalf of all parties who have filed an address for service shall be placed on the call-over list with priority.
- (c) Appeals shall be determined to be long Appeals or short Appeals at the discretion of the Registrar, taking into account the terms of the Certificate of Readiness or Certificates of Readiness filed, but in general any Appeal which is expected to require more than two hours for hearing will be treated as a long Appeal.
- (d) When the Registrar has decided whether an Appeal is a short Appeal or a long Appeal, and a date of hearing has been fixed by the Registrar or a Judge or at call-over, the Registrar shall give notice in writing to all parties to the Appeal of the date of hearing. Such notice can be given by electronic transmission where appropriate and, in the case of a respondent who has not filed a notice of address for service, shall be given by priority prepaid post addressed to the respondent at the address given in the Notice of Appeal.
- (e) To facilitate the hearing of Criminal Appeals from the Magistrates Court in addition to the provisions of s.222 (2)(c) of the *Justices Act* 1886 the Registrar of the Court at which the Appeal is to be dealt with will ensure that the notice required to be given will be forwarded at least 21 days before the date notified as the date on which the Appeal is to be heard.
- (f) Where possible such notice may be given by electronic transmission.

## **7. Consent orders**

- (a) Where the parties agree that the Appeal should be dismissed by consent they should file a memorandum of dismissal in the District Court registry in approved form 68 of the Rules.
- (b) Otherwise, if the parties agree, in writing to resolve the appeal, they may file a consent order in the registry under rule 666 of the Rules

**8. Appeal Hearing**

- (a) **The Registrar of the Court in which the Appeal is to be dealt with must prepare the relevant file with the lists of documents of parties attached on the outside of the file with each document identified and clearly**
  - i. marked, so that each document referred to may readily be identified by the Judge at the hearing of the Appeal.
  
- (b) The Registrar of the Court in which the Appeal is heard shall forward to the Registrar, secretary or similar officer of the relevant court or entity from which the Appeal is brought, a copy of the order and/or reasons for judgment in each Appeal together with any original court or entity record.

**Chief Judge KJ O'Brien**

20 May 2016