

PRACTICE DIRECTION NUMBER 1 of 2018

LAND COURT OF QUEENSLAND

ADR PANEL MEDIATION

1. This Practice Direction, issued pursuant to s 22(2) of the *Land Court Act 2000*, defines the process for court-supervised mediations by a Convenor from the Court's ADR Panel. It supplements s 37 of the *Land Court Act 2000* and Part 6 of the *Civil Proceedings Act 2011*.
2. A mediation conducted under this Practice Direction is an *ADR Panel mediation* and the person who conducts it is the *Mediator*.

Background

3. The Court is committed to resolving disputes in a way that is accessible, fair, just, economical and efficient. To further that objective, the Court may direct parties to engage in either private or court-supervised mediation.
4. This Practice Direction applies only to an ADR Panel mediation and does not apply to:
 - a. a Preliminary Conference held in an appeal relating to a valuation of land (Practice Direction 2 of 2015); or
 - b. a Mediation by a Member or the Judicial Registrar of the Court (Practice Direction 3 of 2017).

Mediation Order

5. The Court may order¹ an ADR Panel mediation at any stage of any case before the Court,² whether the Court is fulfilling a judicial or an administrative function.
6. In deciding whether to order an ADR Panel 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.

¹ The Court makes its order pursuant to s 43 of the *Civil Proceedings Act 2011*.

² Before a party has filed a case in the Court, the parties to a dispute within the jurisdiction of the Court may agree to use a Convenor from the ADR Panel to mediate the dispute (pre-filing mediation). The parties may agree:

- (a) to use the mediation procedure set out in this Practice Direction; and
- (b) to use a Convenor from the ADR Panel as agreed between them or as nominated by the Registrar.

The Court does not make an order for pre-filing ADR. The parties must arrange for pre-filing ADR through the Registrar and the Convenor.

7. The Mediator for an ADR Panel mediation must be an ADR Panel Convenor selected by the parties, if they agree, or by the Registrar, in consultation with the parties, if they do not agree.

Participation in the mediation

8. Participation in an ADR Panel mediation is under the direction and control of the Mediator. The parties must participate in good faith and must not impede the mediation.³
9. Unless the Mediator otherwise allows, a party must attend in person, with or without their legal or other representative.
10. 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 party informs the Mediator of the process for endorsing a settlement and, after consulting with the other parties, the Mediator considers it does not present an unacceptable limitation on the mediation.
11. Where appropriate, and after consulting all parties to the Mediation, 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

12. The Registrar will provide the Mediator with access to all filed documents.
13. The Mediator will contact each party to discuss arrangements for the mediation, including:
 - a. date, time, venue, and period allocated for the mediation (if not already fixed);
 - b. preparatory meetings with all or some of the participants;
 - c. the scope, format and nature of information about the dispute to be provided to the Mediator;
 - d. any special requirements (such as cultural and language, physical access, audio-visual or other IT needs);
 - e. any requests by a party not to attend in person (see [10]);
 - f. any requests about participation in the mediation (see [11]);
 - g. any other requests about mediation arrangements made by a party; and
 - h. arrangements for payment of the Mediator's fee.
14. If the Mediator considers co-mediation will enhance the prospects of reaching agreement, they may recommend the parties agree to engage a co-mediator. The co-mediator must be a Convenor on the ADR Panel with specialist expertise relevant

³ Section 44 of the *Civil Proceedings Act 2011*.

to the dispute. If the parties agree to appoint a co-mediator, the mediation order and this practice direction will bind the co-mediator.

Confirmation of mediation process

15. Following intake, the Mediator will advise the parties in writing of the arrangements for the mediation, including any preconditions, expectations or particular requirements of the Mediator, and, in particular:
- 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 summary 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, should be provided by any party and by what date; and
 - d. confirmation of the process by which a party who does not attend the mediation in person will endorse an agreement negotiated at the mediation.

Without prejudice and confidential process

16. An ADR Panel mediation is conducted on a without prejudice basis. The law relating to without prejudice communications governs information shared and documents prepared for the mediation.
17. The Mediator, the parties, and all other participants must respect the confidentiality of the mediation.⁴
18. If the case does not resolve at mediation, no person may give evidence at the hearing of anything done or said or any admission made at the mediation, unless all parties agree.⁵
19. Following completion of the mediation, the Mediator must destroy all materials provided to or prepared by or for the Mediator for the sole purpose of the mediation, whether or not the case is resolved.⁶

Meeting separately with the parties – private meetings

20. Mediation styles and practices may differ between Mediators and between cases. The Mediator may hold private meetings with the parties, at the Mediator's discretion, taking into account the nature and circumstances of the case.
21. 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.

⁴ The Mediator must maintain confidentiality with limited exceptions; see s 54 of the *Civil Proceedings Act 2011*.

⁵ Section 53 of the *Civil Proceedings Act 2011*.

⁶ This obligation does not extend to business and taxation records, such as the mediation agreement and invoices.

Adjournment and request for directions

22. The Mediator may adjourn a mediation to another date, but must advise the Registrar in writing of the date to which the mediation is adjourned.
23. The Mediator or any party may make a written request for further directions from the court about arrangements for the mediation.
24. The Member managing the case will consider the request and provide a written response to the Mediator and the parties.

Termination

25. The 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 is or was engaging in illegal, improper or unethical conduct in the mediation, or in the case generally.
26. The Mediator must advise the parties before terminating the mediation but is not required to give reasons for doing so.

If the case is resolved by agreement

27. 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.
28. In any case, the Mediator must file a Mediator's Certificate in the approved form.
29. If the parties propose consent orders, the Mediator must include them in or attach them to the Mediator's Certificate. The Member managing the case will consider the proposed consent orders and either:
 - a. make the orders by consent on the papers; or
 - b. if they consider it necessary to change or refine the orders, hear from the parties before doing so.

If the case is not resolved by agreement

30. Paragraphs [31] to [34] apply if the case does not completely resolve at mediation.
31. If the parties do not reach an agreement which finally disposes of the case, the Mediator will discuss options for the further conduct of the case and seek agreement about procedural matters⁷ that will facilitate a fair, efficient and effective hearing, including:

⁷ The Mediator will use the current Practice Directions and Model Directions, if any, to facilitate agreement about procedural matters.

- a. The contents of a statement of agreed facts;
 - b. The contents of an agreed list of issues of fact or law;
 - c. The expert witness procedure;
 - d. A proposed schedule for the parties to file witness statements and other evidence;
 - e. Arrangements for the hearing, including whether it should be an oral hearing or not and whether there is a preliminary point that the court could decide before it holds a full hearing.
32. Whether the parties agree about procedural matters or not, the Mediator must file a Mediator's Certificate in the approved form.
33. If the parties agree on any procedural matters, the Mediator must specify the agreement in the Mediator's certificate and attach any agreed documents (such as statements of agreed facts or list of issues of fact and law).
34. The Member managing the case may:
- a. make directions, on the papers, in accordance with the parties' agreement; or
 - b. if they consider it necessary to change or refine the procedure proposed by the parties, hear from the parties before doing so.



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President
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