

SUPREME COURT OF QUEENSLAND
PRACTICE DIRECTION NO 1 OF 2023

COMMERCIAL LIST

Purpose

1. The Commercial List exists for the just, expeditious and efficient resolution of commercial matters at a minimum of expense.
2. This Practice Direction aims to improve the conduct of commercial litigation by an enhanced Commercial List.
3. As soon as possible after a matter has been placed on the List it will be allocated to an identified Commercial List Judge.
4. That Judge will be responsible, unless unusual circumstances arise, for the case management and disposition of the matter.
5. This Practice Direction is supported by Notes that provide guidance about practical aspects of the List including:
 - (a) [Commercial List Note to Parties and the Profession](#)
 - (b) [Commercial List Note about Draft Directions](#)
 - (c) [Commercial List Note about Expert Evidence](#)
 - (d) [Commercial List Note about Electronic Document Filing and Management](#)
6. This Practice Direction:
 - (a) applies to commercial matters commenced in, or transferred to, the Brisbane Registry. A commercial matter filed in another region will be subject to case management as appropriate in that region;
 - (b) applies to existing and future proceedings on the Commercial List; and
 - (c) commences operation on 30 January 2023.

The Commercial List

7. The Chief Justice in consultation with the Senior Judge Administrator may from time to time assign a Judge to administer the Commercial List (“the Commercial List Principal Judge”).

8. The Chief Justice in consultation with the Senior Judge Administrator may from time to time assign any one or more Judges to conduct and manage matters on the Commercial List (“the Commercial List Judges”).
9. The Associate to the Commercial List Principal Judge will generally be the first point of contact about the Commercial List. Any initial email contact about the Commercial List must be copied to the Commercial List Manager and to the other parties.
10. Once a matter is on the Commercial List and allocated to a Commercial List Judge, the parties’ principal point of contact for listing reviews and other purposes is that Judge’s Associate. The Commercial List Manager will assist the Commercial List Principal Judge and the Commercial List Judges in managing matters on the Commercial List.

Commercial matters

11. A matter may be placed on the Commercial List by a party to the proceeding if the issues involved are, or are likely to be, of a general commercial character, or generally arise out of trade and commerce, including ecommerce.
12. A matter on the Commercial List may be removed from the List on the application of a party to the matter or at the discretion of a Commercial List Judge.
13. Without being exhaustive, matters of a general commercial character or that generally arise out of trade or commerce will likely include proceedings where the real issues in dispute concern:
 - (a) the construction of a business contract, smart contract or other commercial instrument;
 - (b) insurance and reinsurance;
 - (c) banking and financial services, including dealings in cryptocurrency;
 - (d) the provision and enforcement of securities of any kind;
 - (e) the conduct of business and commercial agents;
 - (f) rights in, to, or concerning technology, including blockchain technology;
 - (g) intellectual property;
 - (h) partnership and joint venture relationships;
 - (i) the export or import of goods or services;
 - (j) the provision of goods or services by land, sea, air, cable, pipeline or through use of the internet for commercial purposes;
 - (k) arbitral proceedings under the *Commercial Arbitration Act* 2013 (Qld);
 - (l) the exploitation of natural resources;
 - (m) conduct in and/or the operation of financial markets and exchanges;

- (n) data ownership, storage and security;
- (o) an appeal or judicial review relating to a tax, levy or royalty; and
- (p) directors' duties, shareholder rights, capital raising, takeovers, compulsory acquisitions, buy-outs and windings up under part 5.4A of the *Corporations Act* 2001 (Cth).

Categories of Commercial List matters

14. The Commercial List comprises different types of commercial matters. Depending upon the circumstances they may:
 - (a) be managed and determined by a Fast Track procedure for matters requiring urgent resolution;
 - (b) be a proceeding that is expected to involve a trial of no more than 5 days' duration (including submissions); or
 - (c) be a proceeding that is expected to involve a trial of more than 5 days' duration.
15. Each matter on the List will be managed by directions that suit its individual circumstances. The Court encourages parties to adapt common forms of draft directions to those circumstances.

Placing matters on the Commercial List

16. A request to place a matter on the List is to be made by email to the Associate to the Commercial List Principal Judge. A copy of the request email must be sent to the other parties (whether or not those parties have yet appeared in the matter).
17. The request to list may be made at any time after the filing and service of the originating process. In an exceptional case that requires urgent resolution, a request to list may be made before a proceeding has started.
18. If possible, the request should be made and sent by the online [Commercial List request form](#). The request to list should include a concise statement of the nature of the dispute and the main issues that are expected to arise, contact details of the parties, and such other matters that will assist the Court to deal with the request and to allocate the matter to a Commercial List Judge.
19. Any party opposing a matter being on the Commercial List should promptly provide a concise statement of their grounds of opposition to the Associate to the Commercial List Principal Judge or to the Associate to any Commercial List Judge to whom the matter has been allocated.
20. The Commercial List Judge to whom a matter is allocated may make initial directions on the papers. Urgent matters usually will be subject to Fast Track Directions made a short time after the matter is placed on the List. Other matters will be listed by the allocated Judge for a review and case management directions.

Overriding obligations of parties and their lawyers

21. The parties and their lawyers are expected to co-operate with the Court and among themselves in the early identification of the real issues in dispute and in resolving those issues efficiently and expeditiously. There are no exceptions to this expectation because of the size or nature of the matter.
22. Commercial List matters are to be conducted by the parties consistently with their obligations under rule 5 of the *Uniform Civil Procedure Rules 1999 (Qld)* (“UCPR”) and the general obligations that apply under Practice Direction 18 of 2018 (Efficient Conduct of Civil Litigation) about the identification of issues, the efficient management of documents at all stages of litigation, preparation for trial and the development of trial or hearing plans.

Reviews by a Commercial List Judge and interlocutory applications

23. Well prior to any review, the parties are to communicate with each other and, if necessary, to confer (either in person, by telephone or by video-link):
 - (a) to facilitate the identification and resolution of as many issues as possible at or prior to the review; and
 - (b) to agree steps and directions for the just and expeditious resolution of issues at a minimum of expense.
24. If the parties agree directions for the conduct of a matter, they may request that agreed directions be made by consent on the papers and for the review to be de-listed.
25. A review may involve the hearing and resolution of substantive issues. The parties should approach reviews on the basis that, in an appropriate case, contested interlocutory issues may be decided at a review, provided the other parties and the Judge are informed of the proposal to do so and the issue or issues to be decided, and sufficient time is allocated for them to be decided at a review.
26. If a substantive issue is sought to be resolved at a review then, subject to any contrary direction by the Judge, the parties are, by 4.00pm on the day before the review, to provide any necessary material, concise written outlines and proposed orders to the Associate to the Judge.
27. If a party wishes to appear at a review by telephone or video-link, arrangements should be made for this with the other parties and the Associate to the Judge well before the review, with documents circulated by the party appearing remotely well before the review to ensure that the Court and other parties are not disadvantaged or delayed by that form of appearance.
28. Parties are to avoid the unnecessary proliferation of documents (in hard copy or electronic form) at reviews and interlocutory hearings, such as affidavits exhibiting irrelevant or marginally relevant correspondence and voluminous exhibits to which the Judge is unlikely to be taken. Only relevant documents should be placed before the Court at reviews. For an ordinary application, this should include any rule 444 and 445 letters, and any correspondence and documents which the Judge is likely to be required to consider at the hearing (which may be tendered as exhibits at the hearing of the

application). For a more complex application, the Judge may make directions prior to its hearing about the filing of applications, affidavits, and written outlines.

Interlocutory applications on the Commercial List

29. In any interlocutory application made in a matter except an urgent or Fast Track matter:
- (a) rules 444 and 445 *UCPR* apply;
 - (b) relevant rule 444 and 445 letters will be emailed to the Associate to the allocated Commercial List Judge by any party seeking to bring the interlocutory application;
 - (c) following the receipt of the rule 444 and 445 letters, the Judge will make directions on the papers for the hearing and determination of the interlocutory application;
 - (d) the interlocutory application will be heard by the allocated Judge or, where it is consistent with the interests of expedition and efficiency, by another Commercial List Judge allocated by the Commercial List Principal Judge; and
 - (e) the parties should always consider whether an interlocutory application may be able to be heard and determined appropriately on the papers.

The first review

30. If the matter is not urgent (as to which see “Fast Track Directions” below), the first review will usually be held within 5 business days of the matter being placed on the List and assigned to a Commercial List Judge. At the first review before that Judge the following matters will ordinarily be considered:
- (a) whether the matter should remain on the Commercial List;
 - (b) if the proceeding has started by way of originating application, whether it is appropriate for the proceeding to be tried without pleadings;
 - (c) if pleadings are required, a timetable for the close of pleadings;
 - (d) the efficient management of documents, the development of a document plan and specific orders for disclosure that are appropriate to the case;
 - (e) whether lay evidence is expected, from whom, its proposed form (witness summary, witness statement, or affidavit) and the timing of its provision to the other parties; and
 - (f) the identification of the issues in respect of which expert evidence may be required and, if expert evidence is expected, the type of directions that should be made about expert evidence at the first review or a second review.

Any second review

31. If required, a second review will generally be convened within 2 months of the first review. At least the following matters will be dealt with at a second review:
- (a) identification of any outstanding interlocutory issues;
 - (b) a provisional trial plan;
 - (c) trial dates; and
 - (d) trial directions.

Allocation of final hearing dates

32. The allocation of realistic, early dates for a trial or final hearing is critical to the just, expeditious and efficient resolution of matters at a minimum of expense, either at trial or by pre-trial mediation or compromise.
33. Either at a review hearing, or by administrative processes, the allocated Commercial List Judge will seek to provide hearing dates before that Judge, based upon a trial plan that provides a realistic estimate of the expected duration of the trial and proposed trial dates.

Communications by lawyers with the Court

34. The Commercial List's objectives will be better achieved if legal practitioners are able to keep the Court informed of relevant matters as and when they arise.
35. Lawyers should only engage in factual, civil and uncontroversial communications with the Court. Argumentative correspondence will be regarded as contrary to the purpose of this Practice Direction.
36. A party's lawyers may send an email communication to the Associate to the allocated Judge so long as the lawyers for all other parties are copied and the communication is not expressed in argumentative or tendentious terms.
37. A party's lawyers do not require the permission of any other lawyers before a communication is sent to the Associate to the Judge.
38. The Court must be kept informed whenever it appears that a party will not be able to comply with a direction or order. Timely communication of this kind is expected to be made to the Associate to the allocated Judge together with an explanation for the expected non-compliance and the further time required. It is contrary to the spirit and intent of this Practice Direction for the Court to be advised of non-compliance with any directions or orders after the event.

Electronic document filing and management

39. Processes to facilitate the electronic filing and management of documents are the subject of the Commercial List Note about Electronic Document Filing and Management in support of this Practice Direction.

Expert evidence

40. The efficient conduct of the Commercial List requires parties to confer at an early stage and seek directions from the Court, as needed, as to:
 - (a) the formulation of any issue or issues to which expert opinion is to be directed;
 - (b) the assumptions upon which expert opinion is to be based;
 - (c) the briefing of an expert or experts, including the provision of relevant documents, suitably arranged;
 - (d) the provision, upon reasonable request from an expert, of additional information or instruction; and
 - (e) the conferring of experts in the same field once they have been properly briefed, are ready to participate in an expert conference and before they have drafted their reports.
41. Processes and draft directions to facilitate the efficient and cost-effective provision of expert evidence in a proceeding requiring it are the subject of Notes in support of this Practice Direction.

Urgent matters / Fast Track Directions

42. An urgent matter is an exceptional proceeding that, by reason of its nature, requires urgent resolution. It may involve a proceeding started by originating application or claim, and include claims for interim, interlocutory and/or final relief.
43. An application to list an urgent matter on the Commercial List is to be made by email to the Associate to the Commercial List Principal Judge. The application should ordinarily be made after the filing of the originating process, but in an exceptional case, an application for listing may be made before a proceeding has started.
44. A Commercial List Judge may make directions for a matter to be conducted by way of Fast Track Directions. They may include orders for:
 - (a) no pleadings unless the Court otherwise orders;

(Ordinarily, there will be no pleadings in a matter to be conducted in accordance with Fast Track Directions. Instead, the parties will use Fast Track Statements, Fast Track Responses, Fast Track Cross-Claims and Fast Track Replies.)
 - (b) expedited timetables for filing and service of Fast Track Statements, Responses, Cross-Claims and Replies;
 - (c) limited disclosure and document orders that will facilitate an early hearing;
 - (d) early allocation of final hearing dates;
 - (e) a pre-trial conference; and

- (f) trial plans, and, in an appropriate case, the conduct of “stopwatch hearings”.

Judgment delivery

45. Parties may expect that, in respect of a matter that takes five days or fewer to try, judgment will be delivered no later than approximately 4 weeks after the last day of the trial.

Repeal of former Practice Directions

46. Practice Directions 3 of 2002, 17 of 2015 and 21 of 2016 are repealed.

A handwritten signature in blue ink, appearing to read 'H Bowskill', is positioned above the printed name and title.

Helen Bowskill
Chief Justice
16 January 2023