

**SUPREME COURT OF QUEENSLAND**  
**PRACTICE DIRECTION NUMBER 2 OF 2024**

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**BUILDING, ENGINEERING AND CONSTRUCTION LIST**

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**Purpose**

1. This Practice Direction establishes a Building, Engineering and Construction List (**BEC List**) to improve the conduct of large and complex litigation in relation to building, engineering and construction issues.
2. The aim of this Practice Direction is to facilitate the just and expeditious resolution of the real issues in dispute at a minimum of expense by ensuring that the issues in contest are identified at an early date and that the litigation is not unnecessarily delayed by interlocutory disputes.
3. This Practice Direction:
  - (a) applies to large and complex litigation in relation to building, engineering and construction issues commenced in, or transferred to, the Brisbane Registry; and
  - (b) commences operation on 4 March 2024.
4. To provide maximum flexibility in bringing large and complex litigation in relation to building, engineering and construction issues to trial and their prompt disposal at trial, the provisions of the following Practice Directions will not apply to a matter on the BEC List:
  - (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);
  - (c) Practice Direction 18 of 2018 (Efficient conduct of civil litigation); and
  - (d) Practice Direction 1 of 2023 (Commercial List),except to the extent ordered to the contrary.

**The BEC List**

5. 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 BEC List (the **BEC List Judges**).

6. The Registrar will appoint a Manager to assist in the management of matters on the BEC List (**BEC List Manager**).
7. The BEC List Manager will keep a list of all matters on the BEC List.

### **Building, Engineering and Construction related matters**

8. A matter may be placed on the BEC List if:
  - (a) it is of a nature and complexity warranting judicial supervision; and
  - (b) the matter involves a substantial issue in respect of building, engineering or construction.
9. An issue in respect of building, engineering or construction includes, but is not limited to:
  - (a) proceedings relating to or arising out of—
    - (i) the design, carrying out, supervision or inspection of any building or engineering work;
    - (ii) the performance by any building or engineering expert of any other services with respect to any building or engineering work; or
    - (iii) any certificate, advice or information given or withheld with respect to any building or engineering work; or
  - (b) proceedings on a claim for rectification, setting aside or cancellation of any agreement with respect to matters mentioned in paragraph (a).
10. For this Practice Direction:
  - (a) **building or engineering expert** includes a builder, engineer, architect, designer and quantity surveyor.
  - (b) **building or engineering work** includes—
    - (i) any intended building or engineering work; and
    - (ii) any building or engineering work in the course of construction or completion or which has been substantially or fully completed; and
    - (iii) any associated work.
11. Notwithstanding paragraph 9 above, matters under the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) will not usually be placed on the BEC List.

### **Placing matters on the BEC List**

12. A matter may be placed on the BEC List by an order of a BEC List Judge:

- (a) upon a request being made by a party;
  - (b) following a referral from the Resolution Registrar; or
  - (c) at the discretion of the BEC List Judge.
13. A request to place a matter on the BEC List is to be made by email to the BEC List Manager, who will refer the request to the BEC List Judges. A copy of the request email must be sent to the other parties (whether or not those parties have yet appeared in the matter).
  14. The request to list may be made at any time after the filing and service of the originating process.
  15. 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 with the request and to allocate the matter to a BEC List Judge, including but not limited to the following:
    - (a) a succinct statement of the nature of the dispute;
    - (b) brief particulars of the issues said to arise;
    - (c) a statement whether or not the other party or parties agree that the proceeding should be listed; and
    - (d) details of any considerations of urgency.
  16. Any party opposing a matter being on the BEC List should promptly provide a concise statement of their grounds of opposition.
  17. A matter on the BEC List may be removed from the BEC List on the application of a party or at the discretion of a BEC List Judge.

### **Assignment of proceedings**

18. If appropriate, the proceeding will be placed on the BEC List and a BEC List Judge will be assigned to manage the proceeding.
19. The proceeding will be made returnable for an initial case conference before the BEC List Judge to whom it has been assigned.
20. Subject to any direction from time to time by the Senior Judge Administrator, the BEC 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.
22. Once a matter is on the BEC List and allocated to a BEC List Judge, the parties' principal point of contact for listing case conferences and other purposes is that Judge's associate, with all correspondence to be copied to the BEC List Manager.

### **Case conferences by a BEC List Judge**

23. A BEC List Judge will manage a BEC List matter 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 BEC 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 BEC 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. The parties should be prepared to deal with the following matters at the initial case conference:
  - (a) whether the matter should remain on the BEC 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, including the extent of disclosure;
  - (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 case conference or a subsequent case conference, including as to:
    - (i) the formulation of any issue or issues to which expert opinion is to be directed;
    - (ii) the assumptions upon which expert opinion is to be based;
    - (iii) the briefing of an expert or experts, including the provision of relevant documents, suitably arranged;
    - (iv) the provision, upon reasonable request from an expert, of additional information or instruction; and

- (v) the conferring of experts in the same field before they have drafted their reports.

### **Subsequent case conferences**

- 28. Any matters 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 BEC List Judge, after consultation with the parties.
- 29. The following additional matters may be dealt with at subsequent case conferences:
  - (a) identification of any outstanding interlocutory issues;
  - (b) an order referring the matter to mediation, including timing, the identity of the mediator and costs;
  - (c) a provisional trial plan;
  - (d) trial dates; and
  - (e) trial directions.

### **Interlocutory disputes**

- 30. If agreement is not reached at the case conferences on any matters or any other interlocutory matter, the BEC 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.

### **Communications with the Court**

- 31. At all stages of the proceeding, a party may communicate with the Court by email to the associate to the BEC List Judge with a copy to the BEC List Manager ([BECListManager@courts.qld.gov.au](mailto:BECListManager@courts.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.
- 32. 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.
- 33. 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.

34. 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 BEC List Judge together with an explanation for the expected non-compliance and the further time required.



**H Bowskill**  
Chief Justice  
22 January 2024