

SUPREME COURT OF QUEENSLAND
PROTOCOL

WILLS AND ESTATES LIST

1. The purpose of this Protocol is to trial the establishment of a Wills and Estates List to effect the expeditious resolution of proceedings brought in respect of a Will or the Estate of a deceased person and to reduce the costs of such proceedings.
2. This Protocol is not intended to apply to Wills and Estates proceedings, which can be conveniently disposed of in the Applications jurisdiction.
3. A proceeding will only be placed on the Wills and Estates List if its nature and complexity warrants judicial supervision. Priority will be given to proceedings requiring urgent determination.
4. Where the relevant proceeding has been filed in Rockhampton, Townsville or Cairns, the local judge will determine if it is appropriate for the proceeding to be managed in accordance with this Protocol.
5. This Protocol is intended to:
 - a. provide some explanation of the nature and function of supervision of cases on the Wills and Estates List;
 - b. inform parties (and particularly their legal advisers) of what is expected of them in the supervision of such cases.
6. To the extent that it is consistent with the just determination of cases, supervision seeks to maximise the efficient determination of cases on the List. In particular, it seeks:
 - a. to ensure only proceedings of a nature and complexity requiring judicial supervision are placed on the Wills and Estates List;
 - b. to ensure that, at the trial, the parties focus on matters genuinely in issue;
 - c. to minimise time spent at trial proving matters not genuinely in issue;
 - d. otherwise to ensure that evidence at trial is presented as efficiently as is consistent with a fair hearing of the case;
 - e. to ensure that the prospects of settlement, whether of the whole proceeding, or some issue or issues in it, have been fully explored before dates are allocated for the trial of the matter;
 - f. to ensure that a case is properly ready before trial dates are allocated to it;

- g. otherwise to minimise the risk of an adjournment of the trial.
 - h. to the extent consistent with a just hearing, that the cost of litigation is reduced.
7. Parties to a proceeding on the Wills and Estates List are particularly referred to the following:
- a. rule 5 of the UCPR;
 - b. part 4 of chapter 9 of the UCPR (ADR processes);
 - c. part 5 of chapter 9 (offers to settle);
 - d. rule 666 of the UCPR (consent orders);
 - e. PD 10 of 2011 (Use of Technology for the efficient management of documents during litigation);
 - f. PD 18 of 2018 (Efficient Conduct of Civil Litigation);
 - g. Guidelines for Joint Conferences of Expert Witnesses (Expert Conference Guidelines – copy attached).

List

8. The Chief Justice in consultation with the Senior Judge Administrator may from time to time allocate any one or more judges to conduct the Wills and Estates List (“the Wills & Estates List Judges”). The Wills and Estates List Judge for the trial period is Justice Boddice.
9. The Wills & Estates List Manager within the Registry is responsible to the Wills & Estates List Judge for the administration and management of the Wills & Estates List.
10. The Wills & Estates List Manager will generally be the first point of contact about the Wills & Estates List and may be contacted by email (willsandestateslist@justice.qld.gov.au), fax (07 3738 7676), and telephone (07 3738 7971). Contact by email is encouraged.

Listing proceedings

11. The Wills & Estates List judge has a discretion as to the entering and retention of proceedings on the Wills & Estates List. Proceedings which may be placed on the list include:
- i. The proceeding seeks relief in respect of a Will, including a promise to make a Will or mutual Wills.
 - ii. The proceeding seeks an order for a Statutory Will to be made on behalf of a person.
 - iii. The proceeding seeks relief in respect of the estate of a deceased person, including by way of family provision and applications relating to testamentary trusts made pursuant to section 96 of the *Trusts Act 1973*.
 - iv. The proceeding seeks relief in respect of a personal representative or trustee of the estate of a deceased person, including the payment of executor’s commissions.

- v. The proceeding seeks relief in respect of the superannuation death benefits of a deceased person.
- vi. The proceeding seeks any other relief pursuant to the *Succession Act 1981*.

Applying for listing

12. A party may make a request to the Wills & Estates List Judge for a proceeding to be placed on the Wills & Estates List.
13. A Judge may at any time order that a proceeding be placed on the Wills & Estates List. In determining whether to order a proceeding be placed on the Wills & Estates List, relevant considerations include the complexity of the issues in dispute, the nature and size of the estate and whether the matter can be appropriately determined in the Applications List. The Judge's Associate is to advise the Wills & Estates List Manager and the Associate of the Will & Estates List Judge of the Order.
14. Unless otherwise directed, an application by a party to have a proceeding listed on the Wills & Estates List may be made only:
 - a. After the claim or originating application has been served on the defendants or respondents;
 - b. After the views of the other parties as to its listing have been sought by the applicant for listing;
 - c. On service of an application to list, on the other parties to the proceedings, on at least two clear business days' notice.
15. Upon a request being made by a party, the Wills & Estates List Judge will determine whether the proceeding is appropriate to be placed on the List. An application for listing is to be supported by a document made in accordance with this practice direction ("a listing statement"). Email filings are encouraged.
16. The listing statement must include:
 - i. a succinct statement of the nature of the dispute;
 - ii. brief particulars of the issues said to arise;
 - iii. a statement whether or not the other party or parties agree that the proceeding should be listed;
 - iv. a statement, avoiding undue formality, of the applicant's contentions in relation to the proceedings, which should identify:
 1. The general facts on which the applicant relies in seeking relief;
 2. The legal grounds, including statutory rights, relied on;
 - v. details of any considerations of urgency;
 - vi. a timetable for progress to resolution, including estimated trial length and costs of the proceeding (to date, and to trial);
 - vii. why the proceeding cannot be conveniently determined on the Applications List.

17. An applicant for listing should prepare a draft order setting out the directions sought on the return of the application. The draft order is to be delivered to the Associate to the Wills & Estates List Judge and to the other party or parties, not later than 24 hours prior to the time set for the listing hearing. Any consent by respondents should be endorsed on the draft. In the event of agreement by the parties, the Wills & Estates List Judge may without further hearing from the parties, proceed to include the proceedings on the Wills & Estates List, obviating the need for a hearing.

Directions

18. The Wills & Estates List Judge may make such orders or give such directions as appropriate to ensure the just, efficient and expeditious disposal of cases on the List.
19. Parties are expected to attempt to reach agreement about whether and when they should engage in ADR; the form of ADR; and arrangements for undertaking ADR. They should inform the Wills & Estates List Judge of any agreement reached; or explain the areas of dispute. If the parties are unable to resolve the proceeding, they should attempt to resolve individual issues.
20. The parties should attempt to reach agreement, and if necessary seek directions, about:-
 - a. Whether it is appropriate to appoint a joint expert in respect of one or more of the issues, and if so, the arrangements for the appointment of such an expert (relevant considerations include the value of the issue to which the evidence relates; and the resources of the parties);
 - b. Steps to be taken under the Expert Conference Guidelines.
21. Where directions are made for experts to prepare a joint report, they should usually include a direction that an expert is not to give evidence which is materially different from any view expressed by the expert in a joint report, without the leave of the Court. A party proposing to apply for leave should give notice forthwith to all other parties, together with an explanation of the reason for the application; and should inform the Associate of the Wills & Estates List Judge.

Reviews

22. Parties are expected to confer at least one week before any review, to attempt to agree directions to be sought at the upcoming review.
23. Where parties reach agreement about the directions to be made, they are to provide, by email, a copy of the agreed directions to the Associate of the Wills & Estates List Judge. If the Wills & Estates List Judge is prepared to do so, such directions may be made without a formal hearing.

24. If the parties are unable to agree about directions, each party is to provide to the Associate, by email, a copy of that party's draft of the directions sought.
25. Directions will usually nominate dates by which directions are to be complied with.
26. Reviews will generally be limited to the determination of directions, involving only limited disputes. Substantial interlocutory disputes will not be determined at a review. Such matters may be dealt with in the same way as in other civil litigation (for example, in the Applications List).
27. Where a party considers that early determination of an issue is appropriate, it should so advise the other parties, and inform the Associate of the Wills & Estates List Judge.

Trial

28. Once a matter is placed on the Wills & Estates List, it will not be allocated trial dates unless a request for trial date is filed, or a Judge otherwise orders.
29. A proceeding may be removed from the Wills & Estates List by order of a Judge at any time. Otherwise, a proceeding may be removed from the List by the Wills & Estates Manager where:
 - a. The proceeding (including any appeal) has been finally determined;
 - b. The whole of the proceeding (including any counterclaim) has been determined.
30. If a matter on the Wills and Estates List is resolved and court orders are required to effect a settlement, the parties should advise the Wills and Estates List Judge of the settlement and the orders sought. The Wills and Estates List Judge will advise the parties whether such orders will be made on the papers without the need for any appearance or whether an application should be filed in the ordinary way (returnable in the Applications List).
31. If a proceeding that is not on the Wills and Estates List but is one that falls within those matters referred to in paragraph 11 hereof is resolved, and orders of the court are required to effect the settlement, the parties may request the Wills and Estates List Judge to make orders on the papers in accordance with paragraph 30 hereof.

Future conduct

32. The ongoing need for a separate Wills & Estates List will be reviewed 12 months after the commencement of this trial.

Contact details

The Wills and Estates List Manager: willsandestateslist@justice.qld.gov.au

Current Associates: associate.justiceboddice@courts.qld.gov.au