

PRACTICE DIRECTION NUMBER 2 OF 2011

DISTRICT COURT OF QUEENSLAND

USE OF TECHNOLOGY FOR THE EFFICIENT MANAGEMENT OF DOCUMENTS IN LITIGATION

1. Introduction

- 1.1 This Practice Direction subject to court order, applies to all District Court civil cases.
- 1.2 Terms used in this Practice Direction are defined in the Glossary included in the Related Materials.
- 1.3 The Practice Direction and the Related Materials are available from the Court's website at <http://www.courts.qld.gov.au>.
- 1.4 The Practice Direction is to be applied so as to give effect to Rule 5 (1) of the *Uniform Civil Procedure Rules 1999* (UCPR), namely to facilitate the just and expeditious resolution of the real issues in civil proceedings at a minimum of expense.

2. Purpose

- 2.1 The purpose of the Practice Direction is to encourage the efficient and cost-effective management of documents at all stages of litigation and to facilitate the conduct of electronic trials.
- 2.2 The Practice Direction is based upon the following propositions:-
 - (a) documents must be managed efficiently to minimise the cost of litigation to both the Court and litigants;
 - (b) the earlier the litigants consider the appropriate use of technology in all aspects of litigation, the greater the benefits which will be derived, particularly if the litigation proceeds to a trial;
 - (c) litigants need to liaise with one another and plan document identification, management and exchange as early as possible, ideally as soon as proceedings have been instituted;

- (d) consistent use of an agreed Document Management Protocol from the earliest possible stage should minimize the cost of managing both hard copy and electronic documents in both small and large cases;
- (e) printing large volumes of electronic documents for the purpose of disclosure is usually costly and inefficient;
- (f) photocopying large volumes of paper documents multiple times for the purpose of litigation is usually costly and inefficient;
- (g) litigants must endeavour to exchange documents in a usable, searchable format or in the format in which the documents are ordinarily maintained to allow the party receiving the documents the same ability to access, search, review and display the documents as the party producing them.

3. Use of technology for disclosure and in a hearing

3.1 Litigants must utilise technology where possible to achieve efficiency. For example, litigants should investigate the use of technology to:-

- (a) identify, collect and review documents for disclosure;
- (b) create and exchange electronic lists of disclosable documents;
- (c) inspect disclosed documents and other material;
- (d) communicate with other parties and the Court;
- (e) prepare for trial; and
- (f) present evidence to the Court during a trial.

4. List of Documents and Document Management Protocols

4.1 To maximise benefits and avoid unnecessary costs, as soon as possible after the proceedings have been instituted and prior to disclosure, the litigants should confer with a view to agreeing on:

- 4.1.1 a document plan to address the management of documents at all stages of the proceeding;
- 4.1.2 a Document Management Protocol which ensures that litigants describe and exchange documents consistently to improve searchability and retrieval and to minimise information management costs (see 4.4 & 4.5 below); and

- 4.1.3 the formats for electronic exchange of documents.
- 4.2 A Document Checklist is included in the Related Materials. Its purpose is to assist the litigants to develop an appropriate document plan. Addressing the questions raised in the Checklist will assist in the efficient conduct of disclosure. Practitioners should note that the Checklist is indicative only and does not prescribe the searches to be undertaken or replace practitioners' obligations to advise parties, or parties' obligations to provide disclosure.
- 4.3 After considering the kinds of issues addressed in the Document Checklist, the parties should consider:
 - 4.3.1 the likely costs associated with the proposed disclosure process;
 - 4.3.2 the time required to undertake it; and
 - 4.3.3 whether a less costly and more expeditious process of disclosure should be adopted to facilitate the just and expeditious resolution of the real issues in the proceeding at a minimum of expense.
- 4.4 For the purposes of disclosure under Rule 214 UCPR, unless an alternative is agreed by the litigants or ordered by the Court, the alternative schedule in UCPR Form 19 is the default Document Management Protocol. For further assistance, please refer to the document 'Guidelines to Completion of Form 19 List of Documents'.
- 4.5 To assist, litigants may use the eTrial Document Management Spreadsheet (available on the Court's website) which is based on UCPR Form 19.

5. What is an eTrial?

- 5.1 An eTrial is an electronic trial conducted using computer hardware and software within the courtroom which allows all documentary evidence to be viewed in electronic form by the Court and by those parties involved in the trial.
- 5.2 Fundamental to an eTrial is an agreed Document Management Protocol (as in 4 above). The earlier litigants give consideration to, and arrive at, an agreed Document Management Protocol, the greater the benefits of an eTrial.

6. eTrial hosted by the Court

- 6.1 An eTrial may be conducted using a secure eCourtbook portal hosted by the Court. In such cases, the eCourtbook becomes the repository of the documents to be referred to during the trial. These documents are provided

to the court in a format agreed by the court and the litigants and in accordance with an agreed Document Management Protocol.

- 6.2 The format in which documents should generally be provided is as full text searchable, multi-page PDF files. If litigants believe they are unable to produce a document in text searchable PDF format, they should advise the eTrials registrar as soon as possible.
- 6.3 If the parties believe it is necessary for native file formats to be used in an eTrial, it is the responsibility of the parties to ensure the necessary technology is available in the Court to display these files. Any queries in relation to this issue should be directed to the eTrials registrar as early as possible.
- 6.4 Parties or their legal advisers can access the eCourtbook in court or remotely via the Internet 24 hours a day, 7 days a week by using the unique username and password provided by the Court. This facility removes the need for large volumes of hard copies to be printed and transported to/from the court at great cost.
- 6.5 Where necessary resources are available, the Court will provide computers and related technology within the courtroom running suitable software applications to facilitate an eTrial. While in the court, access to the Internet will also be available through the Court's WiFi Service. The litigants are able to use their own portable device (WiFi capable) or, subject to resources, the Court may provide a WiFi capable device.

7. Conducting a hearing as an eTrial

- 7.1 The Court may order that a trial be conducted as an eTrial. The provision of eTrial services hosted by the Court is subject to competing demands on court resources. The parties may liaise to consider alternatives.
- 7.2 Once an order has been made, the litigants are to arrange with the eTrials registrar for a pre-trial conference. This conference will be attended by the eTrials registrar and all of the active litigants.
- 7.3 Prior to the pre-trial conference, a Pre-Trial Checklist identifying issues the litigants are required to consider in relation to the use of technology during a trial, should be completed (as much as possible) and forwarded to the eTrials registrar via email on etrials@courts.qld.gov.au.
- 7.4 At the pre-trial conference the eTrials registrar will ensure that a Document Management Protocol has been agreed between the litigants and that any unusual or peculiar issues with the conduct of an eTrial are raised and considered.

- 7.5 In an effort to reduce the cost to litigants, if there are no areas of disagreement between the parties in relation to the Document Management Protocol, this document and the Pre-Trial Checklist are to be forwarded to the eTrials registrar, along with a request to have appearances at the pre-trial conference excused. The eTrials registrar will consider such a request and respond to the parties accordingly.
- 7.6 Following the pre-trial conference:
- 7.6.1 the litigants are to complete the remainder of the Pre-Trial Checklist;
 - 7.6.2 the litigants are to complete the eTrial Document Management Spreadsheet template (including the disclosed document meta-data as per the agreed Document Management Protocol, e.g. document ID, date, title, author, etc) and forward it to the eTrials registrar;
 - 7.6.3 the eTrials registrar will assess the spreadsheet and identify any inconsistencies or problems; and
 - 7.6.4 the litigants are responsible for rectifying any issues identified by the eTrials registrar and referred to them.
- 7.7 The eCourtbook should only include those documents which the litigants intend to tender or otherwise use during the trial and, subject to any direction of the Court, should not include all documents disclosed in the proceeding.
- 7.8 Once the eTrials registrar approves the Document Management Spreadsheet, the litigants are to deliver the documents referred to in the agreed format to the eTrials registrar in a form of media agreed with the eTrials registrar.
- 7.9 Once the eCourtbook site has been created, the eTrials registrar will notify the litigants and provide the necessary details to access the site.
- 7.10 Prior to the commencement of the eTrial:
- 7.10.1 the eTrials registrar will organise for training to be provided to the Judge, Associate, Court officers, and litigants; and
 - 7.10.2 any requests to add further documents, or otherwise modify the eCourtbook, are to be made direct to the eTrials registrar.
- 7.11 Once the eTrial has commenced, the Trial Judge's Associate becomes responsible for the eCourtbook. Any requests to add further documents, or otherwise modify the eCourtbook, are to be made direct to the Associate with notice given to the other parties.

8. Other systems

- 8.1 The Court supports the use of commercially available alternatives if litigants and the court consider such solutions to be more suitable in terms of cost-effectiveness, satisfaction of the Court's requirements and the needs of the litigants. For more information, contact the eTrials registrar via email at: etrial@courts.qld.gov.au or telephone (07) 3247 5572.

9. Registry assistance

- 9.1 Legal practitioners or parties requiring information or assistance in the application of this Practice Direction or the use of technology in litigation in the Court are encouraged to contact the eTrials registrar via email at: etrial@courts.qld.gov.au or telephone (07) 3247 5572.

10. Related Materials

- 10.1 The following Related Materials are released with the Practice Direction:
- Document Checklist;
 - UCPR Form 19;
 - Guidelines to complete Form 19;
 - eTrial Document Management spreadsheet (based on UCPR Form 19);
 - Pre-Trial Checklist;
 - Glossary

The Related Materials will be reviewed and updated by the Court from time to time in light of feedback from interested parties and changes in technology.

Chief Judge PM Wolfe

29 November 2011