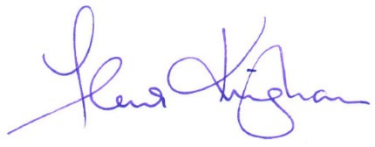
Consolidated Practice Directions of the Land Court



President FY Kingham
Last updated 17 December 2020

FOREWORD

Foreword

The Consolidated Practice Directions of the Land Court of Queensland is provided in response to a suggestion made during the Court's regular consultations with the profession. It will be updated when a new practice direction is issued, or a current practice direction is amended or repealed. It is available on the Land Court Website to facilitate access for self-represented parties and members of the profession.

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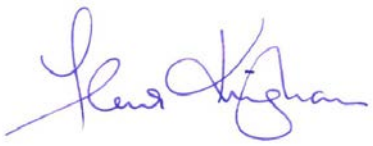

President FY Kingham
Issued 11 December 2020

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INTRODUCTION

Introduction

1. This Practice Direction is issued pursuant to s 22(2) of the *Land Court Act 2000* and repeals and replaces Land Court *Practice Direction 1 of 2019 – eTrials (Electronic hearings)* and *Practice Direction 2 of 2019 – Provision of Electronic Documents to the Land Court,* which are repealed in whole.
2. This Practice Direction explains the digital procedures used in the Land Court.
3. This Practice Direction is to be applied with the objective of avoiding undue delay, expense and technicality.
4. The purposes of this Practice Direction are to:
    a. facilitate the Court dealing with cases in a way that is accessible, fair, just, economical and expeditious;
    b. encourage the efficient and cost-effective management of documents at all stages of litigation; and
    c. facilitate the conduct of electronic trials.
5. Unless stated otherwise, a reference to a party or the parties includes their lawyers or agents.
6. Terms that appear in italics in the Practice Direction are defined in the 'words and meanings' section of the document.

Digital Cases

WHAT IS A DIGITAL CASE?

7. The Court may direct that the case proceeds as a *digital case*. This means that parties are expected to provide all filed documents electronically.

WHEN ARE DIGITAL CASES USED?

8. A case will proceed as a digital case:
    a. if it commences by referral eg. mining objection hearings; or
    b. where the Court makes a direction on its own initiative or at the request of a party.

WHAT IS THE PROCESS?

9. The Registry will advise the parties that their case will proceed as a digital case.
10. The filing party must file any documents in a digital case electronically.
11. If it is not reasonably practicable for a party to file documents electronically, they may request that the Registry receives them in hard copy. If the Principal Registrar accepts that request, the party may file documents in hard copy. The Registry will convert and store the documents electronically.

Filing documents electronically

WHAT DOCUMENTS MAY BE FILED ELECTRONICALLY?

12. The following documents may be *filed electronically*, whether or not the file is a digital case:
    a. general applications in a case;
    b. affidavits, statements of evidence, expert reports;
    c. other documents, including *referral documents* in cases commenced in the Court under a recommendatory provision;[1] and
    d. requests for subpoenas or notices of non-party disclosure.
13. The Principal Registrar may issue a practice note prescribing other documents that may be filed electronically.

WHAT DIGITAL FORMATS ARE ACCEPTED?

14. The Registry will accept a document electronically for filing if it complies with the following requirements:
    a. it is provided as an unlocked *text-searchable PDF* file or in another form approved by the Principal Registrar in writing prior to filing;
    b. it is provided:
        a. by email (only if the document does not exceed 25MB);
        b. on a USB or portable hard drive;
        c. by uploading to a *SharePoint* site as notified by the Registry.
15. The Registry will not accept a document electronically for filing if the document can only be accessed through a file hosting service or via links to other websites provided in an email.

[1] See s 52A *Land Court Act 2000* which defines the meaning of recommendatory provision. It includes referrals to the Court which commence mining objection hearings.

FILING DOCUMENTS ELECTRONICALLY

HOW ARE DOCUMENTS FILED ELECTRONICALLY?

16. A Registry officer will file stamp the document electronically. [2] A seal will also be applied to documents requiring the Court seal. However, a subpoena will not issue until the party requesting the subpoena has paid the applicable fee.
17. The Registry officer will save and link the document to the Land Court file management database.
18. The Registry officer will reply via email advising that the document has been filed and attach a copy of the document with the relevant stamps applied.
19. If the document is too large for the Registry to send back to the filing party, the Registry officer will only send the first page of the document which will contain the relevant stamps.

DATE FOR FILING

20. The date of filing for a document provided electronically will be:
    a. if the document is received by the Registry before 4.30pm on a day the registry is open for business – that day; or
    b. otherwise – the next day the Registry is open for business.

SEARCHING A DIGITAL FILE

21. Unless otherwise provided by Practice Direction, a digital file may be searched by request to the Principal Registrar.[3]

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[2] If a PDF document is locked, the Registry is unable to apply the filing stamps electronically. The Registry will inform the filing party of this. The filing party may wish to send an unlocked version of the document so the electronic stamps can be applied.

[3] The Court intends to provide online access to the file index and filed documents as soon as practicable.

HEARING ARRANGEMENTS

Hearing Arrangements

22. At any stage of a case, prior to the commencement of the hearing, the Court may direct that it is heard as an eTrial, on its own initiative or at the parties' request.
23. An eTrial is a hearing 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 hearing. It has the features set out below:
    a. documents within an eTrial portal are fully searchable. This means keywords and phrases within relevant documents can be quickly and easily searched. This assists parties in the preparation of their case and, where relevant, negotiations, as well as providing easy access to documents during the hearing;
    b. all parties, including remote and regional participants have 24-hour real time access to relevant documents before and during a hearing;
    c. eTrials significantly reduce paper handling and photocopying costs;
    d. eTrials are compatible with commercial document management and case preparation systems; and
    e. documents can be seen by all attendees at the hearing, not just those with access to hardcopies.
24. The Court will consider directing an eTrial in all cases, taking into account relevant considerations, including–
    a. the likely length of the hearing;
    b. the number of witnesses, including expert witnesses;
    c. the potential number of documents;
    d. whether all parties to the proceedings have the ability to produce and receive documents in PDF form;
    e. whether one or more parties are located outside of Brisbane;
    f. whether the likely venue for the trial will support an eTrial;
    g. whether the costs of an eTrial can be easily absorbed in a discovery phase in which documents exchanged are already in electronic format; and

h. the convenience of the Court.

25. The earlier a case is identified for an eTrial the more likely it is that–

    a. costs will be reduced through a streamlining of Court processes; and

    b. parties will get the full benefit of the ease of access to electronic documents.

26. If the case has not already been directed to eTrial, the Court will request the parties to consider whether the case should proceed as an eTrial, once it is clear whether expert evidence will be relied on and what process the Court will use to manage the expert evidence.

27. However, a party may request an eTrial at any stage of a case prior to the hearing commencing.

28. The Court may direct special arrangements for electronic documents if the hearing will take place in a venue that cannot support an eTrial.

Cases proceeding by eTrial

THE ETRIAL PORTAL

29. If the Court directs a case proceeds as an eTrial, it will establish and maintain an eTrial portal for the case.
30. Access to the eTrial portal is limited to recipients of an access link.
31. A party may nominate more than one recipient of an access link. The Principal Registrar will ask each party to provide the email addresses for any recipients.
32. Prior to the hearing commencing, a recipient may upload, read and download documents. Once a hearing commences, a recipient may only read or download documents on the eTrial portal.
33. Any type of document[4] can be added to the eTrial portal, provided it complies with paragraph 14 of this Practice Direction.

THE ETRIAL PROCESS BEFORE THE HEARING

Pre-hearing Conference

34. As soon as practicable after a case is directed to proceed as an eTrial, the Principal Registrar will contact the parties to discuss a pre-hearing conference to settle the arrangements for the eTrial.
35. Parties must bring the Proposed Arrangements for eTrial form[5] to the pre-hearing conference.
36. At the pre-hearing conference, the Principal Registrar will
    a. discuss the eTrial portal and, if possible, demonstrate it to the parties; and
    b. discuss the parties' proposals for the format of the documents and the document ID numbering convention.
37. The Principal Registrar will decide the arrangements for the eTrial, if they are not agreed at the pre-hearing conference.

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4 As defined in the *Evidence Act 1977* Sch 3.

5 See Appendix A.

38. If there are no areas of disagreement between the parties in relation to the conduct of an eTrial the parties may request the Principal Registrar to vacate the pre-hearing conference by providing–
    a. the Proposed Arrangements for eTrial form; and
    b. a consent request for the pre-hearing conference to be vacated.
39. If the Principal Registrar approves the parties' proposed arrangements for the eTrial, the Principal Registrar may vacate the pre-hearing conference.

Document Format

40. Unless otherwise approved by the Principal Registrar, a document for use in an eTrial must be in the format provided for by paragraph 14.

Document Numbering

41. A document ID is the unique identifier for the document, which allows each document on the eTrial portal to be located and cited.
42. Each document (but not each page of a document) will have a document ID (eg. ABC.001 and not ABC 0001.001.0001).
43. If the parties do not agree on the numbering convention for the documents at, or prior to, the pre-hearing conference, the Principal Registrar will decide the numbering convention for the case.

Uploading Documents

44. Unless otherwise directed, parties must upload all documents they wish to access during the hearing, using the agreed or decided numbering convention, no later than five business days prior to the date of the hearing review.
45. A party may request assistance from the Court in uploading their documents.
46. The Court will set up a notification alert for the portal for when new documents are uploaded, altered or deleted.
47. Unless otherwise directed, in an eTrial, service is effected upon the document being uploaded to the eTrial portal.

CASES PROCEEDING BY ETRIAL

Confidential Documents

48. A party must not upload confidential documents to the eTrial portal.
49. If a document has been disclosed subject to directions to preserve its confidentiality, the document can only be uploaded to the eTrial portal by the Court. The Court will advise case-specific arrangements to maintain confidentiality, either as agreed between the parties and the Principal Registrar or as directed by the hearing Member.

Spreadsheet of metadata

50. Any party who uploads new documents to the eTrial portal must provide the Principal Registrar with an Excel spreadsheet of document metadata.[6] This is to assist the Court with applying metadata to the eTrial portal and must be done **every** time new documents are uploaded.

THE ETRIAL PROCESS DURING THE HEARING

Uploading documents

51. Once a hearing commences, the parties' access to the eTrial portal will be limited to read and download only.
52. The Associate to the hearing Member is responsible for managing the eTrial portal during the hearing. The Associate may make any changes to documents and upload any additional documents as agreed by the parties or as otherwise directed by hearing Member.
53. If a party provides written submissions, outlines of arguments or lists of authorities, they should provide them in digital format to the Associate to be uploaded to the eTrial portal before they refer to them.
54. If a party wishes to show a new document to a witness before it has been uploaded to the eTrial portal, they must discuss this with the Associate beforehand, so arrangements can be made to display it in the courtroom.

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[6] See Appendix B for format required for spreadsheet of document metadata.

55. If a new document is admitted into evidence during the hearing,[7] the Associate will upload it to the eTrial portal as soon as practicable and, if the hearing has not concluded, before the hearing resumes.
56. Unless otherwise arranged with the Associate, documents to be uploaded during the hearing must be provided to the Associate in the following way:
    a. documents with a file size of under 25MB may be emailed to the Associate; or
    b. documents with a file size of 25MB or greater must be provided to the Associate by USB or portable hard drive.

Referring to documents

57. When referring to a document during a hearing, parties must cite the document ID in full, followed by the digital page number and any paragraph numbers.

Tendering exhibits

58. Uploading a document to the eTrial portal does not make the document evidence in a hearing, unless there is a direction to that effect.[8]
59. If a party wants to tender a document on the eTrial portal as an exhibit, they must tender it and, if it is admitted into evidence, the Associate will mark the document as an exhibit on the eTrial portal.

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7 This allows the party to introduce a document during a witness' evidence without prior agreement or order.

8 E.g. *Practice Direction 4 of 2018 - Procedure for Mining Objection Hearings* provides each document in the application material in a mining objection hearing will be marked as an exhibit: see [36].

CASES PROCEEDING BY ETRIAL

The eTrial process after the hearing

60. The eTrial portal will be retained for use in the event of:
    a. an appeal against, or judicial review of, the decision; or
    b. a remitted hearing.
61. The parties' access to the eTrial portal will be removed–
    a. if the case resolves before hearing, when the file is closed;
    b. after any relevant appeal period has expired; or
    c. an appeal or judicial review application has been decided.

Words and meanings

Digital case: The Court file, which includes filed documents, orders, correspondence and exhibits, is kept electronically.

Filing documents electronically: Providing documents to the Court for filing in electronic format in accordance with this practice direction.

Hearing review: Directions for hearings arrangements may be made by the President or Member managing the case list. At the hearing review parties or their legal representative inform the Court of the stage they are at in preparation for the hearing. This ensures that all parties are ready for the hearing and have provided the President or Member with the information necessary to proceed to the hearing.

Referral documents: Referral documents include the approved form for referral, if any, and the documents provided to the Court by the referring agency or party to commence a case under a recommendatory provision.

SharePoint: SharePoint is a web-based document management and storage platform that integrates with Microsoft Office.

Text-searchable PDF: A text-searchable PDF file is a Portable Document Format file which enables text to be searched using the standard Adobe Reader search function.

APPENDIX A - PROPOSED ARRANGEMENTS FOR ETRIAL

Appendix A - Proposed Arrangements for eTrial

Technical (e.g. litigation support) contact details: **Name:** **Phone:** **Mobile:** **Email:**	
Proposed numbering convention for document IDs (each document, not each page, must have a unique document ID)	
Proposed format for images, audio and video files	

APPENDIX B –DOCUMENT METADATA SPREADSHEET

Appendix B –Document Metadata Spreadsheet

Land Court of Queensland - Document Metadata Spreadsheet						
Case name:						
Party name:						
Document ID:	**File name:**	**Document title:** [9]	**Document date:** [10]	**Author:** [11]	**Uploaded by:** [12]	**Filed Y/N**

[9] The document title should provide a specific description of the document.

[10] If there is no date available or where an available date does not record either the day, month or year, the date must be recoded as 'undated' for the purpose of the hearing documents index. If a document spans a period of time or contains multiple dates, the date must be recoded as the earliest date in the range for the purpose of the hearing documents index.

[11] Where there is no apparent author the field may be left blank.

[12] Name of the party on whose behalf the document was uploaded. This cannot be left blank.

PRACTICE DIRECTION NUMBER 5 of 2017

LAND COURT OF QUEENSLAND

REPRESENTATION BY AGENTS

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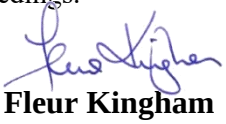
1. The purpose of this Practice Direction is to facilitate representation by agents other than legal practitioners and to enhance the information available to their principals.

2. The procedures set out in this Practice Direction may be varied by direction of the Court.

3. By the time of their first appearance, an agent who is not a legal practitioner, appearing in that capacity, must file written authority of their engagement to act in the approved form signed by their principal. Any limitation of their authority must be recorded on the form.

4. The principal must confirm they have read the following information by signing the approved form:-

> Parties appearing in the Land Court often engage the services of a lawyer to represent them. Lawyers offer clients professional skill and expertise. They are accountable to their professional bodies and to the Court. They are also covered by insurance for any potential liability claims made against them by their clients.
>
> However, a party may choose to represent themselves or be represented by an agent.
>
> Before deciding to be represented by an agent, you should give careful consideration to the suitability and skill of the agent. You should be aware that agents (unlike lawyers) are not required to have professional indemnity insurance cover when representing clients before the Land Court. If you hire an agent and they have no professional indemnity insurance, you may find it difficult to get compensation if serious errors are made by the agent.
>
> In some proceedings in the Land Court, costs are awarded against the unsuccessful party. If the winning party has engaged an agent to represent them, then it is unlikely the agent's fees can be recovered from the unsuccessful party.
>
> You may be asked by your agent to sign a waiver to remove your right to make a claim against the agent if you're unhappy with outcome of the proceedings. You should be aware that you are engaging an agent who may not have to accept any responsibility for the outcome of the proceedings.



Fleur Kingham
President
22/03/2017

PRACTICE DIRECTION NUMBER 4 of 2017

LAND COURT OF QUEENSLAND

DIRECT ACCESS BRIEFING

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1. This Practice Direction is intended to minimise the risk of disruption to litigation and to promote the orderly conduct of cases where a barrister accepts a brief from a person other than a solicitor retained on behalf of a client ("a direct access brief"). The Practice Direction does not apply where a barrister has accepted a brief from a "government legal officer" as defined in the *Legal Profession Act 2007* (s 12).

2. It is expected that a barrister who accepts a direct access brief to appear in the Land Court will:
    (a) if not familiar with the practices and procedures of the Court, take steps to become familiar with those practices and procedures including the matters set out in the *Land Court Act 2000*, the *Land Court Rules 2000* and the various Practice Directions;
    (b) obtain a detailed understanding of the matter, including the client's potential case;
    (c) give consideration to the evidence likely to be required to be called in the case;
    (d) ascertain the nature and volume of documentary evidence likely to be relevant in the case;
    (e) ascertain the identity and number of potential witnesses;
    (f) give detailed consideration to the manner in which the evidence will be collected and prepared for presentation to the Court;
    (g) give careful consideration to the likely steps to be taken in the matter, including the prospect of interlocutory proceedings, case flow management and involvement in the ADR processes utilised in the Court;
    (h) consider whether, having regard to the resources available to the barrister, including the barrister's experience, general competence, and familiarity with the areas of practice likely to be relevant to the matter, the barrister is satisfied that:
        (i) the barrister will be able properly to prepare the case for hearing bearing in mind the requirements of rr 15 and 17 of the *Barristers' Conduct Rules* (see appendix); and
        (ii) the barrister will be able to take all appropriate action on the client's behalf, in a timely fashion, and in accordance with any rules of practice and procedure, practice directions, or other likely orders or directions made in respect of the conduct of the matter; and
        (iii) refuse to accept the direct access brief unless so satisfied.

3. A barrister who accepts a direct access brief must:
    (a) comply with the requirements of r 24B of the *Barristers' Conduct Rules* (see appendix) (this requirement applies to all direct access

briefs, that is, all briefs from a person other than a solicitor retained on behalf of a client, whether or not that person is the client);

(b) cause a document to be prepared which:
  (i) sets out each of the matters which the barrister is required to disclose under r 24B of the *Barristers' Conduct Rules*;
  (ii) includes the written acknowledgement, signed by the prospective client, referred to in r 24B(b) of the *Barristers' Conduct Rules*;
  (iii) contains a certification, signed by the barrister:
    A. that he or she has complied with paragraph 2 of this Practice Direction; and
    B. that he or she informed the prospective client that any complaint of professional misconduct, unsatisfactory professional conduct, or other conduct to which Chapters 3 or 4 of the *Legal Profession Act 2007* applies, may be made to the Legal Services Commissioner (Level 30, 400 George Street, Brisbane, Q, 4000);

(c) at the time at which any Court proceedings are instituted (or if the barrister is retained subsequent to the institution of proceedings, at the time the next document is filed in Court, and in any event before the barrister appears in Court in relation to the matter), cause:
  (i) the document to be filed in the Registry; and
  (ii) a copy of the document to be delivered to the Chief Executive of the Bar Association of Queensland.

4. Where a barrister has accepted a direct access brief, the barrister must not, in accordance with r 17(e) of the *Barristers' Conduct Rules*, be the address for service of any document or accept service of any document in a proceeding before the Court.

Fleur Kingham
President
21/03/2017

APPENDIX

Bar Association of Queensland
Barristers' Conduct Rules
26 August 2016

…

The Work of a Barrister

15. Barristers' work consists of:

(a) appearing as an advocate;
(b) preparing to appear as an advocate;
(c) negotiating for a client with an opponent to compromise a case;
(d) representing a client in a mediation or arbitration or other method of alternative dispute resolution;
(e) acting as a mediator or arbitrator or expert in any dispute resolution;
(f) giving legal advice;
(g) preparing or advising on documents to be used by a client or by others in relation to the client's case or other affairs;
(h) carrying out work properly incidental to the kinds of work referred to in (a)-(g); and
(i) such other work as is from time to time commonly carried out by barristers.

…

17. A barrister must not, subject to Rules 18 and 19,

(a) act as a person's general agent or attorney in that person's business or dealings with others;
(b) conduct correspondence in the barrister's name on behalf of any person otherwise than with the opponent;
(c) place herself or himself at risk of becoming a witness, by investigating facts for the purposes of appearing as an advocate or giving legal advice, otherwise than by:
    (i) conferring with the client, the instructing solicitor, prospective witnesses or experts;
    (ii) examining documents provided by the instructing solicitor or the client, as the case may be, or produced to the court;
    (iii) viewing a place or things by arrangement with the instructing solicitor or the client; or
    (iv) library research;
(d) act as a person's only representative in dealings with any court, otherwise than when actually appearing as an advocate;
(e) be the address for service of any document or accept service of any document;

(f) serve any process of any court;
(g) conduct the conveyance of any property for any other person;
(h) administer any trust estate or fund for any other person;
(i) obtain probate or letters of administration for any other person;
(j) incorporate companies or provide shelf companies for any other person;
(k) prepare or lodge returns for any other person, unless the barrister is registered or accredited to do so under the applicable taxation legislation; or
(l) hold, invest or disburse any fund for any other person.

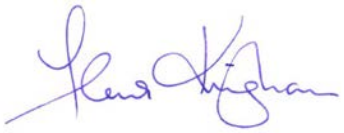
…

24B. A barrister who proposes to accept instructions directly from a person who is not a solicitor must:

(a) inform the prospective client in writing of:
    (i) the effect of Rules 15 and 17;
    (ii) the fact that circumstances may require the client to retain an instructing solicitor at short notice, and possibly during the performance of the work;
    (iii) any other disadvantage which the barrister believes on reasonable grounds may, as a real possibility, be suffered by the client if the client does not retain an instructing solicitor;
    (iv) the relative capacity of the barrister in performing barristers' work to supply the requested facilities or services to the client compared to the capacity of the barrister together with an instructing solicitor to supply them; and
    (v) a fair description of the advocacy experience of the barrister; and
(b) obtain a written acknowledgement, signed by the prospective client, that he or she has been informed of the matters in (a) above.

Procedure for Nomination of ADR Convenor or Process

Practice Direction 4 of 2020



President FY Kingham
Issued 19th November 2020

Procedure for Nomination of ADR Convenor or Process

1. This Practice Direction is issued pursuant to s 22(2) of the *Land Court Act 2000*. It details the procedure for the Judicial Registrar to nominate the *ADR Convenor* or process when the parties cannot agree.
2. The Practice Direction applies to statutory pre-filing ADR and ADR of matters filed in the Court.
3. The Court is committed to resolving disputes in a way that is accessible, fair, just, economical and efficient and aims to finalise requests and nominations promptly to enable the *ADR process* to commence without delay.
4. Where the parties cannot agree upon an ADR Convenor or Process, a party may request the Judicial Registrar to make the nomination.
5. The request must be:
   a. In the prescribed form[1]
   b. Emailed to ADRPanel.Landcourt@justice.qld.gov.au and
   c. Provided to each other party at the same time.
6. Any party wishing to respond to the request, must:
   a. Use the prescribed form[2]
   b. Email the form to ADRPanel.Landcourt@justice.qld.gov.au and
   c. Provide a copy to each other party at the same time.
7. The Judicial Registrar may request further information or submissions from the parties before making the nomination.

[1] ADR Form 01 – Request for ADR Convenor / ADR Process

[2] ADR Form 01A – Response to Request for ADR Convenor / ADR Process

Procedure for Nomination of ADR Convenor or Process

Nomination of ADR Convenor and/or ADR Process by Judicial Registrar

8. The Judicial Registrar will aim to provide the written nomination within 7 days of receiving the last material from the parties.
9. In making the nomination, the Judicial Registrar will take into account and consider the following:

    a) the nature of the dispute
    b) the type and complexity of the issues in dispute
    c) the location of the parties and the subject land
    d) the financial circumstances of the parties
    e) any actual or perceived conflicts of interest
    f) the availability and expertise of convenor's on the ADR panel
    g) any other relevant matters raised by the parties.

Procedure for Nomination of ADR Convenor or Process

Words and meanings

ADR Convenor: A convenor is a member of the Land Court's ADR Panel.

ADR Process: Means a process of mediation or case appraisal.

Case Appraisal: Case appraisal is a form of ADR. An impartial person (the Case Appraiser) assists the parties to discuss and attempt to resolve their dispute by agreement. If the parties cannot agree, the Case Appraiser will make a non-binding decision. The parties may agree to abide by the decision or bring their dispute to the court. The Case Appraiser must keep the discussions confidential and the parties cannot use what is said or done during a case appraisal in a court case.

Case Appraiser: The person undertaking a case appraisal.

Mediation: Mediation is a form of ADR. An impartial person (the Mediator) assists the parties to discuss and attempt to resolve their dispute by agreement. The Mediator must keep the discussions confidential and the parties cannot use what is said or done during a mediation in a court case.

Mediator: the person who undertakes a mediation is known as the Mediator.

Statutory Pre-Filing ADR: is ADR conducted in accordance with a statutory requirement that ADR be undertaken by the parties as a pre-condition to the commencement of litigation in respect of the dispute.

AMENDED 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 order[1] 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.

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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 the **filed document index**[i].

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

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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.

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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 matters[7] that will facilitate a fair, efficient and effective hearing, including:

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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.

Commencement

35. This Amended Practice Direction takes effect from 04 February 2019.

Fleur Kingham
President
06/02/2019

[i] Amended by removing 'all filed documents' and replace with 'filed document index'

AMENDED PRACTICE DIRECTION NUMBER 3 of 2017

LAND COURT OF QUEENSLAND

JUDICIAL[i] MEDIATION

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1. This Practice Direction, issued pursuant to s 22(2) of the *Land Court Act 2000*, defines the process for court supervised mediations. It supplements and should be read in conjunction with s 37 of the *Land Court Act 2000* and Part 6 of the *Civil Proceedings Act 2011*.

2. It does not apply to Preliminary Conferences held in appeals relating to valuations of land, which are governed by Practice Direction 2 of 2015.

3. A mediation conducted under this Practice Direction is referred to as a *court supervised mediation* and the person who conducts it is referred to as the *Mediator*.

Background

4. The Court is committed to resolving disputes in a way that is accessible, fair, just, economical and efficient.

5. The use of private mediation is an important means to fulfil that objective. Parties are encouraged to consider private mediation at any stage of any case before the Court.

6. To further the Court's objective, the Court may direct parties to engage in either private or court supervised mediation. The Mediator for a court supervised mediation will be either a Member or Judicial Registrar of the Court.

7. Whether the mediation is a private or a court supervised mediation, the order is made pursuant to ss 43 and 44 of the *Civil Proceedings Act 2011*. However, this Practice Direction applies only to court supervised mediation.

8. Court supervised mediation may be ordered at any stage of any case before the Court; whether the Court is fulfilling a judicial or an administrative function.

9. In deciding whether to direct court supervised 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.

Participation in the mediation

10. Participation in a court supervised mediation is under the direction and control of the Mediator. Parties are expected to participate in good faith and must not impede the mediation.[1]

11. Unless the Mediator otherwise allows, a party must attend in person, with or without their legal or other representative.

12. 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 Mediator is informed of the process for endorsing a settlement and, after consulting with the other parties, considers it does not present an unacceptable limitation on the mediation.

13. Where appropriate, 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

14. The Mediator or a court officer will contact each party to discuss arrangements for the mediation, including:
    - date, time, venue, and period allocated for the mediation (if not already fixed);
    - any special requirements (such as cultural and language, physical access, audio-visual or other IT needs);
    - who the parties wish to participate in the mediation, including expert witnesses or other advisors;
    - any requests relating to representation at the mediation (see paragraph 12); and
    - any requests about mediation arrangements made by any other party.

Confirmation of mediation process

15. Following intake, the Mediator will approve arrangements for the mediation, which will be provided in writing to the parties.

16. The arrangements will deal with any preconditions, expectations or particular requirements of the Mediator, and will include:

    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 statement 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, must be provided by any party and by what date;

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

d. whether a party has leave to be represented by a person without authority to commit and, if so, confirmation of that party's process for endorsement of an agreement negotiated at the mediation.

Without prejudice and confidential process

17. A court supervised mediation is conducted on a without prejudice basis. Information shared and documents prepared for the mediation are governed by the law relating to without prejudice communications.

18. The Mediator, the parties, and all other participants are expected to respect the confidentiality of the mediation.[2]

19. If the case does not resolve at mediation, evidence may not be given at the hearing of anything done or said or any admission made at the mediation, unless all parties agree.[3]

20. Following completion of the mediation, whether the case is resolved or not, the Mediator must destroy all materials provided to or prepared by or for the Mediator for the sole purpose of the mediation.

Meeting separately with the parties – private meetings

21. Mediation styles and practices may differ between Mediators and between cases. Whether a Mediator holds private meetings with the parties is at the Mediator's discretion and will depend upon the nature and circumstances of the case.

22. 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.

Adjournment

23. A Mediator may adjourn a mediation to continue at a later date.

Agreement

24. 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.

25. If the parties propose consent orders, the Member managing the case will consider the orders proposed by the parties and, if they consider it necessary to change or refine the orders, will hear from the parties before doing so.

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2 The Mediator is bound by a requirement of confidentiality with limited exceptions; see s 54 of the *Civil Proceedings Act 2011*.

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

Termination

26. A 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 has engaged or is engaging in illegal, improper or unethical conduct in the mediation, or in the case generally.

27. A Mediator is not required to give reasons for terminating the mediation.

Further conduct of the case

28. Paragraphs [29] to [35] apply if the case does not completely resolve at mediation.

29. The Mediator must file a Mediator's Certificate in the approved form.

30. After consultation with the parties, the Mediator may include in their Mediator's Certificate recommended directions for the further conduct of the case. The Member who is managing the case will consider whether to make the recommended directions and will notify the parties of their decision.

31. The parties may request the Mediator to hear and determine the case or one or more issues raised in the case. The request must:
    a. be in writing and signed by all parties;
    b. specify what is to be determined; and
    c. record the parties' agreement to be bound by the Mediator's determination.

32. The Mediator cannot agree to the request unless it is made by all parties.

33. The Mediator can decline the request and is not required to give reasons for doing so.

34. If the Mediator agrees to the request, the Mediator will give directions about the procedure for the case or issue(s) to be determined, including whether there will be an oral hearing or whether it will be determined on documents filed with the Court.

35. Other than as provided for in paragraphs 31 to 34, should the case proceed past mediation to hearing in the Land Court or the Land Appeal Court, the Court as constituted for the case will not include the Mediator.

Commencement

36. This Amended Practice Direction takes effect from 04 February 2019.

Fleur Kingham
President
06/02/2019

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[i] Amended title from Court Supervised Mediation Guidelines to Judicial Mediation

PRACTICE DIRECTION NUMBER 2 of 2015

LAND COURT OF QUEENSLAND

THE PRELIMINARY CONFERENCE PROCESS FOR APPEALS UNDER THE *LAND VALUATION ACT 2010*

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(1) This Practice Direction applies to proceedings commenced in the Land Court by way of an appeal under the *Land Valuation Act 2010*.

(2) In cases where the valuation appealed against is $5 million or less, each party will be invited to attend a preliminary conference in an effort to resolve or narrow the issues in dispute.

(3) Where the valuation appealed against is more than $5 million, the Valuer-General will have offered the objector the opportunity to participate in an independently-chaired objection conference under the *Land Valuation Act 2010*. In these cases, the Land Court will not offer a preliminary conference to the parties save in exceptional circumstances.

Timeframe

(4) The Land Court expects that, save in exceptional circumstances, the parties will have participated in a preliminary conference and concluded any post-conference negotiations, within 12 months of the appeal being filed.

Listing Arrangements

(5) Preliminary conferences will be scheduled by the Land Court in consultation with the parties as soon as reasonably practicable after the filing of the appeal.

(6) The Court will endeavour to accommodate each party's preferred dates for the conference, but it will not always be possible to accommodate everyone.

(7) Normally, the conference will be held in the district where the subject land is located.

Preliminary Conference Procedures

(8) Where a matter has been listed for a preliminary conference, it is compulsory for each party or their representative to attend the conference in person. If a party or representative wishes to appear otherwise than in person (eg. by telephone or videolink), an application for leave must be made to the Court at least 14 days prior to the date scheduled for the conference.

(9) The party or representative attending the conference must:

(a) be familiar with the substance of the issues in dispute; and

(b) be prepared to identify and discuss the issues in dispute in an attempt to negotiate a settlement; and

(c) have authority to settle the matter or any issue in dispute.

(10) Each party must act reasonably and genuinely in the preliminary conference process.

(11) A preliminary conference is conducted on a 'without prejudice' basis. Evidence of anything said or any admission made at the conference is not admissible in any subsequent proceeding without the consent of the parties.

(12) If a party fails to attend the conference or is not represented by a person with appropriate authority, the Member or Judicial Registrar presiding over the conference may terminate the conference and make any order as to costs as is considered appropriate.

Conclusion of Preliminary Conference Process

(13) If, at a preliminary conference, the parties agree on a resolution of their dispute, the Member or Judicial Registrar presiding over the conference may dispose of the matter in the way agreed.

(14) If the parties require additional time to continue their negotiations, the parties will normally be granted a period of two (2) to four (4) weeks for further discussion. The maximum period of time which the Court will allow for post-conference negotiations is six (6) weeks, save in exceptional circumstances.

(15) If agreement is not reached at the preliminary conference, or within a reasonable time after the conference, the proceeding will be listed for hearing and determination by a Member.

Carmel MacDonald
President
27 July 2015

Expert evidence in the Land Court

Practice Direction 6 of 2020

President Fleur Kingham
Issued 14th December 2020

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INTRODUCTION

Introduction

1. This Practice Direction–
   a) provides an overview of the procedures for expert evidence in the Land Court
   b) explains the duties of expert witnesses and the parties who instruct them
   c) outlines the Court's expectations of expert witnesses giving evidence in the Land Court
   d) repeals and replaces Practice Directions 2 of 2017 and 3 of 2018 and the Guidelines for Expert Evidence in the Land Court.
2. An expert witness is a person who would, if called as a witness at the hearing of a case, be qualified to give opinion evidence about an issue arising in the case.[1]
3. An expert witness assists the Court on matters of a technical and specialist nature by providing their objective and impartial opinion, drawing on their knowledge and experience. The Court expects expert witnesses to be independent and well informed, and to observe the limits of their expertise.
4. A person who is:
   a) a party to the case or
   b) a person whose conduct is in issue in the case

   is not an expert witness even if they possess the relevant expertise.
5. Notwithstanding paragraph 4, if a public entity is a party to the case, it may nominate a qualified person in its employ to be an expert witness, provided the nominee confirms they understand and will comply with their duty to the Court.

Example-

The Valuer-General may nominate a valuer in the State Valuation Service as their expert witness in a land valuation appeal.

[1] *Makita (Australia) Pty Ltd v Sprowles* (2001) 52 NSWLR 705.

Overview of Procedures for Expert Evidence

6. The Court's objective is to make timely, efficient, fair, and effective use of expert evidence. It will make directions on a case-by-case basis, taking into account the resources and preferences of the parties, and the nature, scope, and complexity of the issues in the case.
7. The procedures for expert evidence involve the following steps–
   a) The parties identify the issues for the hearing;
   b) The parties nominate their expert witnesses;
   c) The Court decides what procedure will apply, in consultation with the parties;
   d) The parties brief the experts;
   e) If only one party nominates an expert on an issue, the expert witness will produce a statement of evidence;
   f) If more than one party engages an expert on one or more issues those expert witnesses will attend a meeting of experts and produce a joint expert report.[2]
8. If a party contends an expert witness nominated by another party is not qualified to give expert opinion evidence, they must notify all parties and the Court, as soon as practicable, so that question can be dealt with as a preliminary matter.
9. The Court's directions for expert evidence may include directions that[3] -
   a) fix the number of expert witnesses who may be called to give evidence on a specified issue or for a particular area of expertise;
   b) limit the issues on which expert evidence may be led;
   c) limit the number of statements or reports an expert witness may file;
   d) settle the issues or questions the expert witnesses must address:
   e) schedule meetings of expert witnesses;
   f) set dates for filing and service of expert witness statements and joint expert reports;
   g) direct the case to Court Managed Expert Evidence (CMEE);

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2 *Land Court Rules 2000* Part 5 Division 2.

3 *Land Court Act 2000* s 22; Land Court Model Directions.

h) fix how and when expert witnesses will give oral evidence.

The Duty of an Expert Witness

10. The primary duty of an expert witness is to assist the Court. This duty overrides any obligation an expert witness owes to any party or to the person paying their fee or expenses.[4] An expert witness must not accept (and a person must not give) instructions to adopt or reject a particular opinion about an issue in dispute in the case.[5]
11. Expert witnesses must–
    a) understand and comply with their duty to assist the Court;
    b) refrain from acting as an advocate for a party;
    c) comply with the Court's directions;
    d) read the Rules and this Practice Direction;
    e) know what issues they are being asked to consider;
    f) identify if they need further information or instruction in order to give their opinion;
    g) confine their opinion and their evidence to the issues relevant to their area of expertise;
    h) expose the facts, assumptions, methodology, and reasoning that supports their opinion;
    i) fully engage in a meeting of experts, if required;
    j) ensure their contribution to a joint expert report, if required, complies with this Practice Direction; and
    k) be prepared to change, qualify, or revise their opinion where necessary and where the evidence no longer supports their opinion;
    l) if they change an opinion expressed in a report filed with the Court, explain what factors or information resulted in that change of opinion.

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4 *Land Court Rules 2000* r 24C. The Land Court expects an expert witness to fully understand and comply with their duty to the Court. The President of the Court of Appeal has explained the full extent of that duty – "This duty may require a level of candour and voluntary disclosure on the part of an expert witness that might involve prejudicing the case of the party that called the expert witness." (*Alliance Insurance Limited v Mashaghati* [2017] QCA 127 [90]).

5 *Land Court Rules 2000* r 24D.

Nominating the Expert Witnesses

12. The Court requires each party to identify their case in enough detail to allow any other party to understand the case made against them or the case they must prepare to meet.
13. Once the issues are identified, the parties must file and serve on any other party a written notice of the expert witnesses they intend to engage for the hearing.
14. Unless granted leave by the Court, a party cannot engage more than one expert witness for each area of expertise.[6]
15. The notice must include, for each expert witness nominated–
    a) the name of the expert witness;
    b) their discipline or area of expertise;
    c) a short statement of each specific issue or assertion the expert witness will address; and
    d) confirmation the expert can take part fully, properly, and promptly in the Court process.
16. Parties should consider asking an expert witness they intend to nominate to identify whether they require evidence from an expert with another area of expertise in order to express their opinion.

    Example–
    In a land valuation appeal or a claim for compensation for resumption of land, a valuer may need advice from other experts, such as town planners and quantity surveyors, to provide an opinion in the case.

[6] Ibid r 24I.

Single Expert Witness

17. If only one party nominates an expert witness in an area of expertise, that party must brief the expert witness. The brief must contain[7] –
    a) copies of any orders that involve that expert witness;
    b) notice of the issues in dispute relevant to that expert witness's area of expertise;
    c) enough information and opportunity to investigate the facts in relation to the issues in dispute; and
    d) this Practice Direction.
18. The filed statement of evidence from that expert witness–
    a) must comply with the requirements of the Rules;[8] and
    b) will be the evidence in chief of the expert witness at the hearing unless the Court orders otherwise.[9]

7 Ibid r 24.
8 Ibid r 24F.
9 Ibid r 24H.

MORE THAN ONE EXPERT WITNESS IN AN AREA OF EXPERTISE

More than one expert witness in an area of expertise

19. If more than one party nominates an expert witness in an area of expertise, unless otherwise ordered, the parties must provide a consolidated brief of instructions to all those expert witnesses that–
    a) contains the material in paragraph 17;
    b) identifies any issue any party considers the expert witnesses need to address; and
    c) includes any information or documents any party considers relevant to those issues.
20. Including information or a document in a consolidated brief of instructions is without prejudice to the parties' rights to object at the hearing to the admission into evidence of–
    a) all or part of any information or document in the consolidated brief of instructions; and
    b) any evidence relating to the disputed information or document.
21. Where an expert witness's opinion might differ depending on the resolution of a factual or legal issue, the parties must brief the expert witnesses to–
    a) provide their opinion based on all potential resolutions of those issues, not just on those contended for by that party; and
    b) consider whether a preliminary determination of a factual or legal issue by the Court might result in greater clarity and efficiency in preparing their evidence.

Meetings of Experts

PURPOSE OF MEETINGS OF EXPERTS

22. At a meeting of experts, the expert witnesses must:
    a) discuss and clarify the issues;
    b) identify any areas of agreement about their evidence;
    c) discuss and seek to resolve any areas of disagreement; and
    d) prepare a joint expert report.

HOW MEETINGS OF EXPERTS ARE CONDUCTED

23. The parties and expert witnesses must manage the meeting process in accordance with this Practice Direction and the directions for the case. A meeting of experts starts when the expert witnesses first meet, whether in person or otherwise, and ends when they provide their signed joint expert report to the parties. A meeting of experts may occur over several sessions.
24. The expert witnesses are required to discuss and attempt to reach agreement about their evidence in relation to an issue in dispute as it relates to their area of expertise.[10] They must explore the factors that underlie their conclusions and squarely address any differences between them.
25. The expert witnesses must consider the following during their discussions and in preparing their joint expert report–
    a) Do they have the same information?
    b) If not, does any new information affect their opinion?
    c) Do they need any more information or instruction from the parties?
    d) Do they need an opinion or instruction on a matter outside their area of expertise?
    e) Are they using the same methodology and in the same way?

[10] Ibid r 22.

f) If not, why not?

g) What scenarios are presented in the brief of instructions or in preceding expert reports (if any)?

h) How should they address the possible outcomes from those scenarios?

i) What are the points of agreement?

j) For any disagreements:

i. Do they affect the decision that the Court has to make?

ii. Are they about:

a. the existence, relevance, or validity of an asserted or assumed fact;

b. what methodology that should be used to deal with the issue;

c. how that methodology should be applied;

d. the conclusions that arise from applying the methodology to the facts or assumptions; or

e. something else?

k) How will they draft and finalise the joint expert report and by when?

26. The expert witnesses must refrain from conducting independent inquiries unless they have:

a) advised the parties of their intention to do so together with an estimate of the cost and time required to undertake those inquiries;

b) shared the results of their inquiries with all other experts within the same area of expertise before the conclusion of the meeting of experts.

COMMUNICATIONS WITH THE PARTIES AND OTHER EXPERT WITNESSES

27. Once the expert witnesses have commenced their meeting of experts, any communication from them to the parties must be made jointly in writing.

28. The expert witnesses may inform the parties of any matter adversely affecting the proper and timely completion of the joint expert report.

MEETINGS OF EXPERTS

29. Except as provided below, the expert witnesses attending a meeting of experts must prepare their joint expert report without further reference to, or instruction from, the parties.[11]
30. The expert witnesses may ask all parties to respond to an inquiry made jointly of all parties.[12]
31. A joint request must be made even if only one expert witness needs further information or instructions. If there is a dispute between the expert witnesses about whether the request is relevant or necessary, they can note that fact in the request.
32. The parties' response to the expert witnesses must be in writing although they need not respond jointly. If the parties do not respond jointly, they must provide their response to all other parties as well as to the expert witnesses.
33. If the request raises a matter that requires direction or a ruling from the Court, an expert witness or a party may request the Court to list the case for review.

11 Ibid r 24A(1).

12 Ibid r 24A(2).

The Joint Expert Report

34. When parties have nominated more than one expert witness in an area of expertise, the expert witnesses must produce a joint expert report.
35. The applicant/appellant must file and serve the joint expert report within two business days of receipt.[13]
36. The joint expert report is the primary report of the expert witnesses who author it.
37. Unless the Court gives leave to file a further expert report, the joint expert report is the expert witnesses' statement of evidence for the hearing.[14]
38. The joint expert report must, for each expert witness who is an author, comply with the Rules.[15]
39. The joint expert report must also–
    a) Include an executive summary that states, for each issue on which they have been asked to give an opinion:
        a. the matters on which they agree;
        b. the matters on which they disagree but which are not material to their conclusions;
        c. the matters of disagreement which are material to their conclusions, and short reasons for their disagreement.
    b) For each matter of disagreement that is material to their conclusions, state how their conclusions would differ if the Court resolved the disagreement against their view on the matter.
40. In drafting their report, the expert witnesses must consider whether they have fully explained their opinions and the reasons for those opinions. They cannot raise a new matter

[13] Ibid r 24A(5).
[14] Ibid r 24E(2)(a).
[15] Ibid r 24F.

in a further statement of evidence[16] or in their evidence in chief,[17] without leave of the Court.

16 Ibid r 24E(3)(b).

17 Ibid r 24H.

Court Managed Expert Evidence (CMEE)

THE DECISION TO DIRECT A MATTER TO CMEE

41. CMEE allows the Court to supervise the briefing and meeting of expert witnesses and production of their joint expert report.[18]
42. The Court's objective in directing a case to CMEE is to promote an effective, efficient, and fair process for expert evidence, which reinforces–
    a) the duty of the parties to brief the expert witnesses and prepare them to fulfill their role; and
    b) the duty of expert witnesses to provide the Court with relevant and impartial evidence within their area of expertise.
43. Unless otherwise ordered, CMEE will commence with a case management conference and conclude when the Court directs.
44. The Court will consider whether to direct a case to CMEE on a case-by-case basis, usually after the parties have nominated their expert witnesses.
45. The Court will consider directing a case to CMEE if–
    a) The parties nominate multiple expert witnesses; or
    b) The case involves complex issues on which expert evidence will be required; or
    c) The evidence of expert witnesses in one or more areas of expertise will impact on the evidence of other experts; or
    d) There is a history for the case of non-compliance with the *Land Court Rules 2000* or with directions made by the Court.
46. If the Court directs a case to Court Managed Expert Evidence (CMEE), Part 5 Division 2 of the *Land Court Rules 2000* does not apply to a meeting of experts.

[18] For more information about what to expect in a CMEE see Appendices A – C.

COURT MANAGED EXPERT EVIDENCE (CMEE)

THE CMEE CONVENOR

47. The CMEE Convenor must be a Member or Judicial Registrar of the Court.
48. The role of the CMEE Convenor is procedural. Their role is to-
    a) to work with the parties to manage the process for expert witnesses to meet and provide a joint expert report for the Court;
    b) to work with the expert witnesses to ensure their joint expert report assists the Court to resolve an issue in dispute as it relates to their area of expertise; and
    c) to assist the parties in case management.
49. The CMEE Convenor must perform their role in consultation with the parties and must ensure any disputes that arise during CMEE are resolved–
    a) by agreement between the parties and or experts; or
    b) by direction of the Court.
50. The CMEE Convenor cannot decide any substantive issue or procedural dispute in the case and cannot preside at an oral hearing, final hearing, or appeal from a decision made in the case.
51. Unless all parties agree in writing, and the CMEE Convenor agrees, the Court cannot appoint a CMEE Convenor to act as a Mediator in the case.

THE POWERS OF THE CMEE CONVENOR

52. At the request of a party or on their own initiative, the CMEE Convenor may do any of the following–
    a) convene a case management conference;
    b) make procedural directions, with the consent of all parties including directions as to the management of the case.
    c) discuss whether there are issues that require further direction from the Court;
    d) convene and chair a meeting of expert witnesses;
    e) list the case for review.

COURT MANAGED EXPERT EVIDENCE (CMEE)

53. The CMEE Convenor may convene one or more case management conferences or meetings of expert witnesses, at the request of one or more of the parties and the expert witnesses, or on their own initiative.

REPORTS BY THE CMEE CONVENOR

54. The CMEE Convenor must give a written report to the Court, if–

    a) the CMEE may not conclude in time for the hearing to proceed on the dates listed or reserved in the Court calendar;
    b) consent directions alter any previous order made by the Court;
    c) the parties cannot agree on how an issue affecting the expert evidence should be resolved or managed;
    d) the parties request the CMEE Convenor to do so;
    e) the Court requests a report;
    f) the CMEE Convenor considers it appropriate.

55. Before reporting to the Court, the CMEE Convenor must–

    a) provide the parties with a draft report; and
    b) give the parties an opportunity to comment on the report before it is finalised.

CMEE REPORTS

56. As soon as practicable after they are made, the CMEE Convenor must place a CMEE report on the Court file.

CASE MANAGEMENT CONFERENCES

57. Usually, the CMEE will commence with a case management conference.
58. The CMEE Convenor must not meet with a party in the absence of any other party, unless all parties agree.

COURT MANAGED EXPERT EVIDENCE (CMEE)

59. During a case management conference, the CMEE Convenor may assist the parties to do all or any of the following–

    a) identify and clarify the issues in dispute;
    b) decide which issues will require expert witness evidence;
    c) identify which expert witnesses should produce joint expert reports and on which issues;
    d) determine the sequence in which meetings of expert witnesses should take place;
    e) establish, manage, and adjust the timetable for briefing expert witnesses, meetings of experts, and joint expert reports;
    f) ensure the expert witnesses have the information they need to fulfil their function;
    g) prepare a consolidated brief to the expert witnesses, including fixing the issues or questions they will be asked to address;
    h) make arrangements for providing secretarial and administrative assistance for the expert witnesses;
    i) communicate with expert witnesses after they have commenced their meeting of experts;
    j) as joint expert reports are filed, consider whether those reports have consequences for the management of evidence by other expert witnesses;
    k) agree upon directions for case management.

RESTRICTION ON DISCLOSURE ABOUT CASE MANAGEMENT CONFERENCES

60. Except by a written report as provided for by this Practice Direction, the Convenor must not disclose anything done or said, or an admission made, at a case management conference unless required by law.
61. Evidence of anything done or said, or an admission made, at a case management conference is not admissible at any stage in the case, another case in the Land Court or in a civil proceeding unless–

a) all parties agree it may be admitted into evidence; or
b) it is evidence about consent to a direction made at a case management conference; or
c) it is relevant to a civil proceeding founded on fraud alleged to relate to, or to have happened during, the meeting.

THE CMEE CONVENOR CHAIRS THE MEETING OF EXPERTS

62. The CMEE Convenor will chair a meeting of experts convened during a CMEE, unless the CMEE Convenor, in consultation with the parties, considers it is unnecessary to do so.
63. The role of the CMEE convenor in chairing a meeting of experts is to facilitate the expert witnesses to–

a) discuss and attempt to reach agreement on their evidence in relation to an issue in dispute as it relates to their area of expertise; and
b) prepare a joint expert report.

64. The CMEE Convenor will ensure that the expert witnesses understand –

a) the duty of an expert witness to the Court;
b) the CMEE process;
c) the Court's expectations of an expert witness in their oral and written evidence; and
d) the Court's procedures for taking oral evidence from expert witnesses.

65. In consultation with the expert witnesses, and subject to any directions by the Court, the CMEE Convenor may fix dates, times, and venues for meetings, including resumed or further meetings, and may provide reasonable access to Court facilities for the meetings.
66. The CMEE Convenor must chair the meeting in a way that allows and encourages all participants to engage in a comprehensive and professional discussion of their evidence.
67. The CMEE Convenor must not–

a) give an expert witness legal advice on any matter; or
b) attempt to influence an expert witness to adopt or reject a particular opinion;

c) meet with any expert witness attending a meeting of experts unless all the experts attending that meeting participate.

COMMUNICATIONS BETWEEN EXPERT WITNESSES AND THE PARTIES OR OTHER EXPERT WITNESSES

68. The CMEE Convenor will manage the communications between the expert witnesses participating in a meeting of experts and the parties, and other expert witnesses engaged by the parties, to–

a) seek further information;
b) clarify instructions;
c) understand the evidence of other expert witnesses engaged by the parties.

69. The CMEE Convenor must keep the parties informed of the current schedule of meetings of experts and any changes to it.

JOINT EXPERT REPORT

70. The CMEE Convenor may assist the expert witnesses to–

a) check they have addressed all issues identified in their brief or have explained why they cannot do so;
b) confirm they have not expressed an opinion outside their area of expertise;
c) check they have addressed all scenarios arising from the issues and from the evidence of other expert witnesses, to the extent that evidence is relevant to the issues they must address;
d) check they have each considered the underlying facts, assumptions, methodologies, and conclusions of any other expert witness included in the report;
e) check that, to the extent they disagree on the matters in (d) above, they each explain–
    i. why they disagree; and

ii. what their evidence would be if the Court accepted the evidence of the other expert on any of those matters; and

f) identify aspects of their evidence they may need to clarify so the Member who will conduct the hearing can understand it.

RESTRICTION ON DISCLOSURES ABOUT MEETINGS OF EXPERTS

71. The CMEE Convenor must not disclose anything done or said, or an admission made, during a meeting of experts unless all expert witnesses agree or unless required by law.
72. Evidence of anything done or said, or an admission made at a meeting of experts is not admissible at any stage in the case, in another case in the Land Court, or in a civil proceeding unless–

a) all parties agree it may be admitted into evidence; or
b) it is relevant to a civil proceeding founded on fraud alleged to relate to, or to have happened, during the meeting.

CONCURRENT EVIDENCE

Concurrent Evidence

73. Unless otherwise ordered, expert witnesses will give their evidence concurrently.
74. Evidence is given concurrently when two or more expert witnesses in the same or closely related areas of expertise give evidence at the same time.
75. The Court may direct expert witnesses give their evidence consecutively.
76. Evidence is given consecutively when each expert witness in the same or closely related areas of expertise gives their evidence individually, in turn.

SETTING THE AGENDA FOR A CONCURRENT EVIDENCE SESSION

77. The parties must jointly propose a draft agenda for concurrent evidence by the date directed by the hearing Member.
78. The agenda must –
    a) identify the areas of disagreement between the expert witnesses upon which a party wishes to ask questions; and
    b) identify the parts of the joint expert report that relate to each agenda item.
79. The Member will settle the agenda and may direct that specified topics are dealt with before or after the concurrent evidence session.

OVERVIEW OF PROCEDURE FOR A CONCURRENT EVIDENCE SESSION

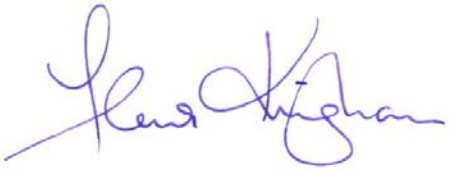
80. The expert witnesses are sworn or affirmed at the same time.
81. Usually concurrent evidence will occur with all expert witnesses present in person and seated together. However, a Member may approve an expert witness participating by telephone or video link.
82. The Member will use the agenda to facilitate a discussion in which-
    a) the expert witnesses, the parties and their representatives, and the Member will all participate.

b) all expert witnesses have an adequate opportunity to express their opinion on each topic and to comment on another expert's opinion;
c) parties can ask relevant questions of any expert witness in relation to each topic;
d) any consensus between the expert witnesses is clarified and noted

83. The experts may comment on what another expert witness says or ask questions of each other.
84. The parties may ask questions of all expert witnesses to ensure all relevant information and opinions are clarified and tested.
85. A Member may adjourn or terminate a concurrent evidence session if they consider it is in the interests of justice to do so.

Procedure for Mining Objection Hearings

Practice Direction 4 of 2018



President Fleur Kingham
Amended 7 April 2020

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INTRODUCTION

Introduction

1. This Practice Direction is issued pursuant to s 22(2) of the *Land Court Act 2000* and repeals and replaces the Practice Directions specified in Appendix A, to the extent stated in that appendix.
2. The Practice Direction explains the procedure the Court will use to conduct a *Mining Objection Hearing* (MOH) in a way that is accessible, fair, just, economical, and expeditious.
3. Terms that appear in italics in the Practice Direction are defined in the Words and Meanings section of the document.

Overview of a Mining Objection Hearing (MOH)

WHAT IS A MOH?

4. The Court must conduct a MOH if any person objects to an application for a mining claim, a mining lease, or an *environmental authority* relating to a mining lease. If there are *objections* to both an application for a mining lease and a related environmental authority, the Court will hear the objections to both applications in a *combined MOH*.

WHAT IS THE COURT'S ROLE?

5. A MOH is not an *appeal* against or *judicial review* of a decision on an application. It is part of the decision-making process.
6. The Court makes a recommendation to the *decision-maker*, after hearing the application and any objection and considering *statutory criteria*.
7. The Court may recommend that the decision-maker–
   a) grants the application; or
   b) grants the application, subject to conditions; or
   c) refuses the application.
8. The decision-maker must take into account, but does not have to act on, the Court's recommendation.

THE COURT'S PROCEDURE

9. The Court–
   a) is not bound by the *rules of evidence*; and
   b) may inform itself in the way it considers appropriate; and
   c) must act according to the substantial merits of the application, objections, and other matters it must consider; and
   d) acts without regard to legal forms, practices, and technicalities that apply in courts other than the Land Court.
10. The Court does not perform an investigative role and will not conduct its own inquiries. It must consider only the evidence admitted during the hearing and the submissions made by the *active parties*.

Example–
If the impact of noise from a proposed mine on a residence is an issue in the MOH, any party can lead evidence about that issue but the Court will not engage an expert to investigate and report to the Court.

11. No party bears the *onus of proof* on *issues for the MOH*. In deciding what recommendation to make, the Court must weigh the benefits and disadvantages of the application referred to the Court, if an objection raises a matter of public interest.

    Example–
    Whether to approve a mining lease over good quality agricultural land raises a matter of public interest. The Court has to consider the public interest in making its recommendation. The applicant does not have to prove it is in the public interest to grant the mining lease and an objector does not have to prove it is not in the public interest to do so.

12. In summary, the procedure for a MOH will include the following steps–
    a) identifying the application and objections to the Court; and
    b) identifying the active parties and their representatives; and
    c) identifying the issues; and
    d) obtaining expert evidence, where required; and
    e) engaging in *Alternative Dispute Resolution* (ADR), if appropriate; and
    f) making arrangements for hearing; and
    g) conducting the hearing; and
    h) making the recommendation.

Starting a MOH

THE REFERRAL

13. The Court starts a MOH when the *referring agency* refers the application(s) and any objection(s) to the Court for hearing.
14. The referring agency must provide the Court with a *Referral Form*, the *application material*, and the *applicant's referral statement* in electronic format.

THE ACTIVE PARTIES IN A MOH

15. An active party must participate fully at all stages of a MOH and must comply with the Court's directions about procedure.
16. Any objector to a referred application is entitled to be an active party in a MOH. However, the Court recognises that not all objectors will wish to take on that role.
17. The Court must consider all objections and will provide all objectors with a copy of the Court's recommendation and reasons, whether or not an objector elects to be an active party.

    Example–
    An objector who does not elect to be an active party may have objected to the application on the ground that dust from the proposed mine will be harmful. Even if no other objector who elects to be an active party objected on that ground, the Court must consider whether the dust from the proposed mine will be harmful, taking into account what the objector has said in the objection.

18. When it receives a referral for a MOH, the Court will write to the applicant and to the objector(s), to inform them of the referral and to ask the objectors whether they want to be an active party.
19. To elect to be an active party, an objector must file a Notice of Election within the *election period*.
20. The active parties to a MOH will be–[1]
    a) the applicant; and
    b) any objector who elects to be an active party; and

[1] The Land Court may decide to add a party to a MOH relating to an application for an environmental authority. See *Environmental Protection Act 1994* s 156(d). The Court would hear from the other active parties before making that decision.

c) the *statutory party* if the MOH relates to an environmental authority.

21. When the election period ends, the Court will prepare and provide to all active parties a list of the names of the active parties, the names of their representatives, if any, and their *address for service*.
22. An objector may apply to be an active party after the end of the election period. However, the Court may approve the application only if satisfied it is in the interests of justice to do so, after hearing from the active parties, and having considered relevant information, including–
    a) whether there is a reasonable explanation for the objector's failure to elect during the election period; and
    b) whether their objection raises an issue which is not included in the issues identified for the hearing; and
    c) what stage the case has reached; and
    d) any prejudice to any active party if the Court gives the objector *leave* to become an active party; and
    e) any prejudice to the objector if their application is not granted.

HOW AN ACTIVE PARTY CAN BE REPRESENTED IN A MOH

23. Any active party can appear in person, or appoint a lawyer or an agent to represent them.
24. If an active party appears in person, the Court will assist them to understand the Court's procedure, but cannot provide legal advice or assist them to present their case.
25. The Court expects all parties and their representatives, if any, to–
    a) act honestly, efficiently, and expeditiously in a MOH; and
    b) be aware of and comply with this Practice Direction, any other relevant Practice Direction and the provisions regarding procedure in the *Land Court Act 2000* and the *Land Court Rules 2000*; and
    c) observe the orders and directions of the Court; and
    d) not *abuse the Court's process*.

THE STATUTORY PARTY

26. The Department of Environment and Science (DES) is the statutory party in a MOH relating to an application for an environmental authority.

27. The statutory party will–
    a) endeavour to assist the Court in making its recommendation about the draft environmental authority; and

b) assist the Court to understand the assessment of the application and any draft conditions proposed by the statutory party; and

c) when requested by the Court, provide suggested draft conditions, relevant to a ground of objection, for consideration by the Court; and

d) based on factual or legal rulings by the Court, assist the Court to identify amendments or new conditions of the environmental authority which may address a ground of objection; and

e) conduct itself in accordance with the *Model Litigant Principles*.

Documents in a MOH

APPLICATION MATERIAL

28. As soon as practicable after receiving the Referral from the referring agency, the Court must provide the applicant with access to the Referral Form and the application material.
29. The applicant must file the applicant's referral statement with the Court no later than five working days before the end of the election period.
30. No later than five working days before the end of the election period, an applicant may apply to the Court for an order restricting access to any *document* in the application material.
31. The application must include the following information–
    a) what document(s) the applicant wants the Court to restrict access to; and
    b) the proposed terms of the restriction order; and
    c) the reasons for the application; and
    d) why it is in the interests of justice for the Court to make the order.
32. The Court may make a restriction order *on the papers*, without an *oral hearing*.
33. When the election period ends, the Court will provide any objector who elects to be an active party with–
    a) access to the Referral Form, the application material (subject to any restriction order), and the applicant's referral statement; and
    b) a copy of any restriction order relating to the application material.

STATUTORY PARTY AFFIDAVIT

34. Unless otherwise ordered, within 14 days of the Court advising it of the active parties to the MOH, the statutory party must *file and serve* on each active party an affidavit by a relevant delegate which–
    a) describes the assessment process; and
    b) attaches or refers to any other documents or information (for example advice received or reports by other government departments) which is relevant and which is not otherwise contained in the application material, and, where applicable, gives reasons why it has not been provided (for example commercial-in-confidence); and
    c) explains by reference to each ground in each objection notice where and how the draft environmental authority addresses that ground of objection.

DOCUMENTS IN A MOH

DISCLOSURE OF DOCUMENTS

35. The Court does not have the power to order *disclosure* of documents by any person, including an active party.

DOCUMENTS IN A MOH

FILED DOCUMENTS AND EXHIBITS

36. If any active party provides the Court with a document before the hearing, the document will be placed on the Court file.
37. Filed documents are not evidence in the hearing, unless an active party asks the Court to admit the document as an exhibit.
38. Unless subject to a restriction order, each document in the application material will be marked as a separate exhibit in the MOH.

ACCESS TO FILED DOCUMENTS AND EXHIBITS

39. An active party to a MOH may inspect and copy any filed document or exhibit, unless subject to a restriction order, upon payment of the prescribed fee.
40. If an active party seeks access to a document which is subject to a restriction order, they may raise this at the *directions hearing* for the MOH.
41. Any other person must request permission to inspect and copy any filed document or exhibit.
42. A person making such a request must–
    a) make a written request which states the documents the person wants to inspect and copy and why they want to do so; and
    b) serve the request on the active parties at the address for service advised by the Registrar.
43. The Court will invite the active parties to make written submissions about the request and will take them into account in deciding whether to grant the request and, if so, on what conditions.

Preparing a MOH

CASE MANAGEMENT

44. The Court has a wide discretion as to its procedure, but must afford the active parties *procedural fairness*. The Court will use *case management directions* to prepare a MOH for hearing, having regard to the number, nature, and complexity of the issues in dispute.
45. The Court will list a MOH for a directions hearing as soon as practicable after the election period ends, and will list further reviews to ensure the MOH progresses in a timely way.
46. At the request of any active party, or on its own initiative, the Court may list a MOH for review so it can make further or different case management directions.
47. The Court encourages the parties, as early as possible, to consider whether the MOH should be conducted as an *eTrial*.
48. The Court expects all parties to proceed in an expeditious way and to work constructively in Court processes directed by the Court, including ADR.
49. The Court will take the parties' compliance with case management directions into account in determining any application for an order that an active party pay the costs of any other active party for all or any part of a MOH.

IDENTIFYING THE ISSUES FOR A MOH

50. During a MOH, the Court can only receive evidence relating to issues raised by a ground contained in a properly made objection.
51. Any active party can ask an objector who is an active party to provide further details of their ground(s) of objection, by making a *request for particulars*. Particulars may clarify or confine the scope of an objection but cannot add new grounds of objection.
52. At any time, an objector may abandon any ground of objection.

EXPERT EVIDENCE

53. Expert witnesses owe a duty to the Court to give independent evidence, which prevails over the duty they owe to the party that has engaged them to give evidence. The *Guidelines for Expert Evidence in the Land Court* provide information about the Court's expectations of expert witnesses and the parties who engage them.
54. The Court will direct the process for expert evidence in a MOH on a case-by-case basis.

PREPARING A MOH

55. The Court will choose the process for expert witness evidence taking into account the resources and preferences of the active parties and the nature, scope and complexity of the issues.
56. In a MOH that will involve evidence from experts in more than one discipline or field of expertise, the Court will consider listing the MOH for *Court Managed Expert Evidence*.

PREPARING A MOH

ALTERNATIVE DISPUTE RESOLUTION

57. The Court encourages the early and economical resolution of issues in a MOH, including, if appropriate, through ADR.
58. The Court expects active parties to consider ADR at every stage of a MOH.
59. The Court may direct active parties to engage in–
    a) Mediation by a Convenor from the Court's *ADR Panel*;
    b) a *Preliminary Conference* or Court-supervised *Mediation* conducted by a Member or the Judicial Registrar; or
    c) Mediation by a private mediator.
60. Unless the Mediator approves other arrangements, the active parties who will participate in the ADR must attend in person.
61. The Court may make directions about–
    a) the arrangements for the ADR; and
    b) the participants for the ADR; and
    c) the issues for the ADR; and
    d) the documents for the ADR.

ENDING A MOH BEFORE THE HEARING

Ending a MOH before the Hearing

WITHDRAWAL OF ALL OBJECTIONS

62. The Court will end the MOH without making any recommendation if all objections to the application are withdrawn.

ABUSE OF PROCESS

63. The Court has power to *strike out objections* which are–
    a) outside the jurisdiction of the Court; or
    b) *frivolous* or *vexatious;* or
    c) otherwise an *abuse of the Court's process*.
64. The Court has power to *stay* a MOH.
65. If the Court decides to stay a MOH because of delay or non-compliance by the applicant, it will provide the Minister for Natural Resources, Mines and Energy and/or the Chief Executive of DES with written reasons for the stay.

THE HEARING

The Hearing

LISTING AND HEARING ARRANGEMENTS

66. The Court will set dates for the hearing as soon as practicable.
67. The Court will list a MOH for a hearing *review* at least one month prior to the first day of the hearing.
68. Five working days before the hearing review the active parties must file in the Registry–
    a) a list of issues (Appendix A to the Model Directions); and
    b) a list of matters not in dispute (Appendix B to the Model Directions); and
    c) a hearing bundle (Appendix C to the Model Directions); and
    d) a proposed hearing plan, which identifies any issues relating to a site inspection (Appendix D to the Model Directions).

ORIENTATION

69. In the usual course, a MOH will commence with a *site inspection*.
70. As early as is convenient during a MOH, the associate to the Member conducting the hearing will present publicly available information about the relevant land using *Queensland Globe (QGlobe)*.

EVIDENCE

71. In a combined MOH, the evidence led in relation to each application will be evidence in the other, to the extent the evidence is relevant.
72. An active party may lead evidence about the issues for the MOH. The applicant may also lead evidence about any statutory criteria not included in the issues for the hearing.
73. The Court may take evidence from expert witnesses in a *concurrent evidence* session.
74. If more than one objector wishes to *cross-examine* a witness about the same issue, the Member conducting the hearing will–
    a) request the objectors to nominate one person to conduct the cross-examination; and
    b) if the objectors cannot agree on who that should be, the Member will appoint one of the objectors or one of their representatives; and
    c) in making the appointment, the Member must consider the views of the relevant objectors.

THE HEARING

75. The Member must ensure the person nominated or appointed to conduct the cross-examination has a reasonable opportunity to obtain instructions from the relevant objectors about the topics for cross-examination.

SUBMISSIONS

76. At the end of the hearing, the Court will make directions for *submissions* by–
    a) all active parties, about the issues for the MOH; and
    b) the applicant, about any statutory criteria not included in the issues for the hearing.

AFTER THE HEARING

After the Hearing

DECISION

77. The Member conducting the MOH will provide a written decision, which includes their recommendation(s) and reasons. If the Member delivers an oral decision at the end of the hearing, the Court will publish it as a written decision as soon as possible.
78. The Court will give as much notice as possible of the date on which the decision will be delivered, to–
    a) the active parties; and
    b) if the MOH is for an application for a mining claim or mining lease, the Departmental Officer who referred the application to the Court.
79. The Member will observe the Court's *Reserved Judgment Policy*, which sets a reporting target of 3 months from hearing or final submissions for Members to deliver their decision.
80. When the hearing ends, or at any time before the decision is delivered, if the Member has good reason to think they cannot deliver their decision in that time, they must set a date by which they expect to deliver the decision.
81. The Court will provide copies of the decision to–
    a) all active parties; and
    b) any objector who did not elect to be an active party; and
    c) if the MOH involves an application for a mining claim or mining lease, the Minister for Natural Resources, Mines and Energy; and
    d) if the MOH relates to a mining lease that is included in a coordinated project, the State Development Minister.

COSTS

82. The Court may order an active party to pay all or some of the costs incurred by another active party, either as fixed in the order or as assessed against a specified *Scale of Costs*.

83. The Court can award costs–
    a) against an applicant who abandons or does not pursue their application for a mining claim or mining lease at a hearing; and
    b) against an owner or objector who withdraws or does not pursue their objection to an application for a mining claim or mining lease at a hearing; and
    c) otherwise as it considers appropriate.

AFTER THE HEARING

84. In deciding whether to make a costs order, the Court will take into account the following matters–
    a) whether the application or an objection was made primarily for an improper purpose; and
    b) whether the application or an objection was frivolous or vexatious; and
    c) whether a party has introduced, or sought to introduce, new material at the hearing; and
    d) whether a party has defaulted in the Court's procedural requirements; and
    e) whether the applicant for a mining claim, mining lease, or environmental authority did not give all the information reasonably required to assess the application; and
    f) whether the applicant or an objector abandoned or did not pursue their application or objection at the hearing; and
    g) any other relevant factor.

Words and Meanings

Abuse of the Court process: Abuse of the Court process is the misuse, or unjust or unfair use of Court process and procedure. Consistent failure to abide by Court orders and directions can constitute an abuse of process.

Active party: An active party for a mining objection hearing is any of the following–

a) the applicant for the mining lease or claim and/or environmental authority
b) the Department of Environment and Science (also the statutory party)
c) any objector who elects to be an active party.

Address for service: A party's address for service is the address the Court and the parties can use to give documents to that party.

ADR Panel: The Court has established a panel of ADR Convenors who are accredited Mediators and have other specialist knowledge and experience.

Affidavit: An affidavit is a written statement, made by a person who has sworn or affirmed before a person authorised to administer the oath that the contents of the statement are true.

Alternative Dispute Resolution: ADR is the use of alternative methods such as preliminary conferences, mediation, or case appraisal to resolve a dispute without the need for the Court to decide the case.

Appeal: An appeal is an application to reconsider or rehear a decision on the ground that there has been an error in the decision.

Applicant's referral statement: A statement of relevant information the Court requires the applicant to file in the Court before the end of the election period.

Application material: Application material is the documents attached to the Referral Form.

Case management directions: Case management directions may provide for one or more of the following–

a) identifying an issue to be decided in a matter at a preliminary stage
b) identifying the issues in dispute
c) Court supervised processes, including preliminary conferences, mediations, and Court managed expert evidence
d) exchanging lists of witnesses, including expert witnesses
e) meetings of experts and the production of joint reports of the experts

f) exchanging statements of witnesses the parties intend to call
g) a review by the Court of the conduct of the matter
h) arrangements for a site inspection
i) the dates and other arrangements for a hearing
j) giving, for use by the Court before the hearing, a copy of–
    i. a document identifying the issues in dispute
    ii. a statement of evidence, including a joint report
    iii. a book of documents to be tendered at the hearing with the consent of the parties
k) limiting the duration of the hearing
l) limiting the time to be taken by a party in presenting their case
m) requiring evidence to be given by affidavit, orally or in another form
n) requiring expert witnesses in the same field to give evidence consecutively, concurrently or in another way
o) limiting the number of witnesses a party may call on a particular issue in dispute
p) limiting the time to be taken in examining, cross-examining or re-examining a witness
q) requiring an opening address or submission to be made in the way the Court directs
r) limiting the time to be taken for an opening address or in making oral submissions
s) limiting the length of a written submission, affidavit or statement of evidence
t) any other matter the Court considers appropriate.

Combined MOH: A combined MOH is a MOH which hears the applications for a mining lease and a related environmental authority, and the objections to those applications, at the same time.

Concurrent evidence: Concurrent evidence involves more than one expert witness giving evidence on the same issue in the same session. The Court's procedure for concurrent evidence is specified by Practice Direction 2 of 2017.

Court Managed Expert Evidence (CMEE): A CMEE is a method where the Court supervises the briefing and meeting of experts and production of their joint expert report. Practice Direction 3 of 2018 governs a CMEE.

Cross-examine: To ask questions of a witness called by another active party to get information on a relevant issue and/or cast doubts on the accuracy of evidence presented by that witness.

Decision-maker: Is–

a) for an application for a mining claim or mining lease, the Minister for Natural Resources, Mines and Energy
b) for an application for an environmental authority, the Chief Executive of DES.

WORDS AND MEANINGS

Directions hearing: At a directions hearing, the Court will make directions about the steps the parties or their witnesses must take in preparation for the hearing.

Disclosure: Disclosure is the delivery or production of documents by a party to a case to the other parties in the case.

Document: Document includes, in addition to a document in writing–

a) any part of a document in writing or of any other document as defined herein
b) any book, map, plan, graph or drawing
c) any photograph
d) any label, marking or other writing which identifies or describes anything of which it forms part, or to which it is attached by any means whatever
e) any disc, tape, soundtrack or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom
f) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom
g) any other record of information whatever.

Election period: Election period is the period in which an objector may elect to be an active party. It ends on the date stated in the letter to objectors. That date must be at least 15 days from the date of the letter.

Environmental authority: Environmental authority means an environmental authority issued under s 195 of the *Environmental Protection Act 1994* that approves an environmentally relevant activity applied for in an application.

eTrial: In an eTrial, the documents that may be required or referred to during the hearing are provided, stored and accessed electronically. Practice Direction 2 of 2016 governs the process for eTrials.

File and serve: To file and serve a document means to give the document to the Court so it can be placed on the Court file and to give a copy of that document to the other active parties at their address for service.

Frivolous: A claim or objection is frivolous if it has no reasonable grounds, but something more than lack of success needs to be shown.

WORDS AND MEANINGS

Guidelines for Expert Evidence in the Land Court: The Guidelines for Expert Evidence explain the Court's expectations of expert witnesses and its procedures for obtaining, documenting and using their evidence.

Issues for the MOH: The issues for the MOH are the issues as defined by this Practice Direction at [48] - [50].

Judicial Review: Judicial Review is the determination by courts of the legality of exercises of power by administrators and tribunals.

Leave: If something can only be done with leave of the Court, it can only be done if the Court makes an order allowing it.

Mediation: Mediation is a form of alternative dispute resolution (ADR). An impartial person (the Mediator) assists the parties to discuss and attempt to resolve their dispute by agreement. The Mediator must keep the discussions confidential and the parties cannot use what is said or done during a mediation in a court case.

Mining Objection Hearing: A MOH is a hearing of an application for a mining claim, a mining lease, or an environmental authority relating to a mining lease and any objection to that application.

Model Litigant Principles: Model Litigant Principles are principles enacted by the Queensland Government outlining the conduct expected of the State and its agencies in legal proceedings. The principles provide that the State and all agencies, in the conduct of all litigation, must adhere to the principles of fairness and firmness, and consider alternative dispute resolution as a method of resolution before proceeding to court.

Objection: An objection is a ground relied upon by a person objecting to the grant of a mining lease, mining claim, or environmental authority.

Onus of Proof: Onus of proof is the obligation of a party in a hearing to produce the evidence that will prove the case it has made against the other party.

On the papers: On the papers is where a matter is determined on written submissions only and the parties will not have the opportunity to make oral submissions.

Oral hearing: An oral hearing is where the Court will make a determination based on written and oral submissions.

Preliminary Conference: A preliminary conference is a form of ADR in which the Judicial Registrar or a Member convenes an informal meeting between the parties to identify the

issues in dispute, discuss those issues and try to find a mutually acceptable outcome, without a court hearing.

Procedural fairness: Procedural fairness means to act fairly in administrative decision-making by–

a) providing a fair opportunity for a party to present their case
b) giving impartial consideration to the merits of the case
c) acting on logically probative evidence.

Queensland Globe (QGlobe): QGlobe is an online interactive tool that presents physical, geographical, and spatial data about a particular location in a map format.

Referral Form: The Referral Form is the approved form for referring the application for a MOH.

Referring agency: The referring agency is the Department of Natural Resources, Mines and Energy except where the only application objected to is an application for an environmental authority. In that case, the referring agency is the Department of Environment and Science.

Request for particulars: A request for particulars is a request for details of the claim in an action before the Court which are necessary in order for the other party to know what case they must meet.

Reserved Judgment Policy: Reserved Judgment Policy.

Review: A review is a procedural hearing (after an initial directions hearing) where the President or a Member reviews the progress of the case and makes procedural directions regarding the future management of the case.

Rules of evidence: Rules of evidence comprise a body of legal principles that govern whether evidence can be admitted during a court proceeding.

Scale of Costs: The scale of costs is a published schedule that is used to determine the amount payable where one party must pay the legal costs of another party to a proceeding.

Site inspection: A site inspection involves the Court party visiting an area of land that is relevant to the case. The Court will conduct a site inspection in accordance with Practice Direction 2 of 2018.

Statutory Criteria: Statutory criteria are matters or factors the Court must consider during a MOH. They are specified–

a) for a mining lease, in s 269(4) of the *Mineral Resources Act 1989*;
b) for a mining claim, in s 78(a) of the *Mineral Resources Act 1989*; and
c) for an environmental authority, in s 191 of the *Environmental Protection Act 1994*.

Statutory party: The statutory party for a MOH involving an objection to an environmental authority is the Department of Environment and Science.

Stay: A stay is an order by the Court suspending a case or a part of a case until further order.

Strike out objections: If the Court strikes out an objection, it will not receive evidence about that objection. If the Court strikes out all objections to an application, the MOH for that application will end.

Submissions: Submissions are the arguments put forward (either orally or in writing) by a party in a hearing.

Vexatious proceedings: Vexatious proceedings include those that are an abuse of the process of the Court, designed to harass or annoy, to cause delay or detriment, or for any other wrongful purpose, instituted without fair or reasonable grounds.

APPENDIX A – PRACTICE DIRECTIONS REPEALED (IN WHOLE OR PART) BY THIS PRACTICE DIRECTION

Appendix A – Practice Directions repealed (in whole or part) by this Practice Direction

PD NO	SHORT TITLE	EXTENT TO WHICH PD REPEALED BY THIS PD
6 of 2013	Additional Applicant Information and Statutory Declaration	In whole
1 of 2015	Procedures Applicable to Matters Referred to the Land Court	In whole
3 of 2015	Objectors Participation in Objections Hearings	In whole
4 of 2015	Approval of Forms	In whole
5 of 2015	Approved Forms for Referrals	In part: paragraphs 5 to 18

PRACTICE DIRECTION NUMBER 6 of 2017

LAND COURT OF QUEENSLAND

COSTS IN RECOMMENDATORY MATTERS

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1. The purpose of this Practice Direction is to establish a process for determining the amount to be paid under an order for costs made by the Court in performing a function under a recommendatory provision (as defined by s 52A *Land Court Act* 2000).

2. Costs in a recommendatory matter may include costs incurred in procuring evidence and the attendance of witnesses.

3. If the parties agree on the amount to be paid under an order for costs in a recommendatory matter, they may file a consent order in accordance with r 44 *Land Court Rules 2000.*

4. If they cannot agree, the party entitled to be paid costs must file in the Land Court Registry and serve on the party liable to pay their costs a costs statement.

5. Within 21 days of being served with the costs statement, the party liable to pay costs may file in the Land Court Registry and serve on the party entitled to be paid costs any objection to the costs statement.

6. If no objection is filed within 21 days, the Court will issue an order fixing costs in the amount claimed in the costs statement.

7. Unless otherwise ordered, if an objection is filed within 21 days the Court will assess costs without an oral hearing and issue an order fixing costs as assessed.

8. Unless otherwise ordered, the Court will assess costs on the standard basis under the District Court Scale as prescribed by the *Uniform Civil Procedure Rules 1999.*

9. The Registrar will provide all parties affected by a costs order with a copy of the order fixing costs.

10. A party affected by the order can request the Court to provide written reasons for the order within 21 days of the date of the order.

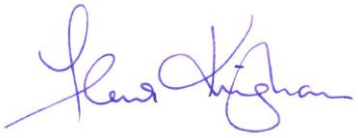
11. For costs assessed under this practice direction:
    a. A costs statement must be in the form prescribed by the UCPR, with necessary changes, and must satisfy the requirements of r 705 UCPR;

b. An objection to a costs statement must be in the form prescribed by the UCPR, with necessary changes, and must satisfy the requirements of r 706 UCPR.

Fleur Kingham
President
28/08/2017

Procedure for deciding Compensation Disputes and Conduct and Compensation Disputes

Practice Direction 3 of 2019



President FY Kingham
Amended 11 August 2020

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INTRODUCTION

Introduction

1. The *Practice Direction* explains the procedure the Court will use in proceedings about Compensation Disputes and Conduct and Compensation Disputes, so that they are dealt with in a way that is accessible, fair, just, economical, and expeditious.
2. This procedure recognises that *parties* may want to negotiate their own agreements, instead of spending money and time on the Court process. The Court is committed to facilitating the resolution of matters by agreement through *Alternative Dispute Resolution* (ADR) processes.
3. Terms that appear in *italics* in the Practice Direction are defined in the Words and meanings section of the document.

OVERVIEW OF THE COURT'S PROCESS FOR DECIDING COMPENSATION DISPUTES AND CONDUCT AND COMPENSATION DISPUTES

Overview of the Court's process for deciding Compensation Disputes and Conduct and Compensation Disputes

WHAT ARE COMPENSATION DISPUTES?

4. The *Mineral Resources Act 1989* (MRA) regulates the granting and renewal of mining claims and mining leases in Queensland. Those tenures cannot be granted or renewed unless compensation has been either–
   a) agreed between the applicant miner and each person who is the *owner* of–
      i land, the surface of which is the subject of the application; and
      ii any *surface access* to the mining claim or lease land;[1] or
   b) determined by the Court.
5. This Practice Direction applies to applications for mining claims or mining leases submitted to the Department of Natural Resources, Mines and Energy (DNRME) on or after 25 October 2018.[2] Practice Direction 1 of 2017[3] applies to any applications for mining claims or mining leases submitted to the DNRME before 25 October 2018.

WHAT ARE CONDUCT AND COMPENSATION DISPUTES?

6. Under the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERCP Act) an *eligible claimant* and a *resource authority holder* may enter into a conduct and compensation agreement (CCA) about–
   a) when and how a resource authority holder may enter the land;
   b) how *authorised activities* must be carried out; and
   c) the resource authority holder's liability to compensate the eligible claimant for any loss or damage caused by the *authorised activity*.

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1 *Mineral Resources Act 1989* s 85, s 279(1)(a).

2 *Mineral Resources Act 1989* s 840.

3 Land Court of Queensland, *Practice Direction 1 of 2017 – Case Management Procedures for Compensation Determinations Relating to Resource Project*.

OVERVIEW OF THE COURT'S PROCESS FOR DECIDING COMPENSATION DISPUTES AND CONDUCT AND COMPENSATION DISPUTES

7. If an eligible claimant and resource authority holder cannot agree on a CCA, either party can apply to the Court for the Court to–
   a) decide a compensation amount;
   b) impose conditions the Court thinks are appropriate for the exercise of the parties' rights; or
   c) vary any existing conditions.
8. This Practice Direction repeals and replaces Practice Direction 1 of 2017,[4] to the extent that the former Practice Direction applied to Conduct and Compensation Disputes.

THE COURT'S PROCEDURE

9. The Court–
   a) is not bound by *the rules of evidence*;
   b) may inform itself in the way it considers appropriate;
   c) must act according to equity, good conscience the substantial merits of the application, and other matters it must consider; and
   d) acts without regard to legal forms, practices, and technicalities that apply in other courts.[5]

10. The Court has a wide discretion as to its procedure, but must afford parties *procedural fairness*. The Court will use *directions* to prepare an application for hearing, having regard to the number, nature, and complexity of the issues in dispute. Directions are orders of the Court and the parties must comply with them.
11. The Court expects all parties to proceed in an expeditious way and to work constructively in Court processes as directed by the Court, including ADR.
12. The Court will take into account the parties' compliance (or non-compliance) with *case management* directions in deciding whether a party should pay the costs of any other party for all or any part of the proceeding.

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4 Land Court of Queensland, *Practice Direction 1 of 2017 – Case Management Procedures for Compensation Determinations Relating to Resource Project*.

5 *Land Court Act 2000* s 7.

OVERVIEW OF THE COURT'S PROCESS FOR DECIDING COMPENSATION DISPUTES AND CONDUCT AND COMPENSATION DISPUTES

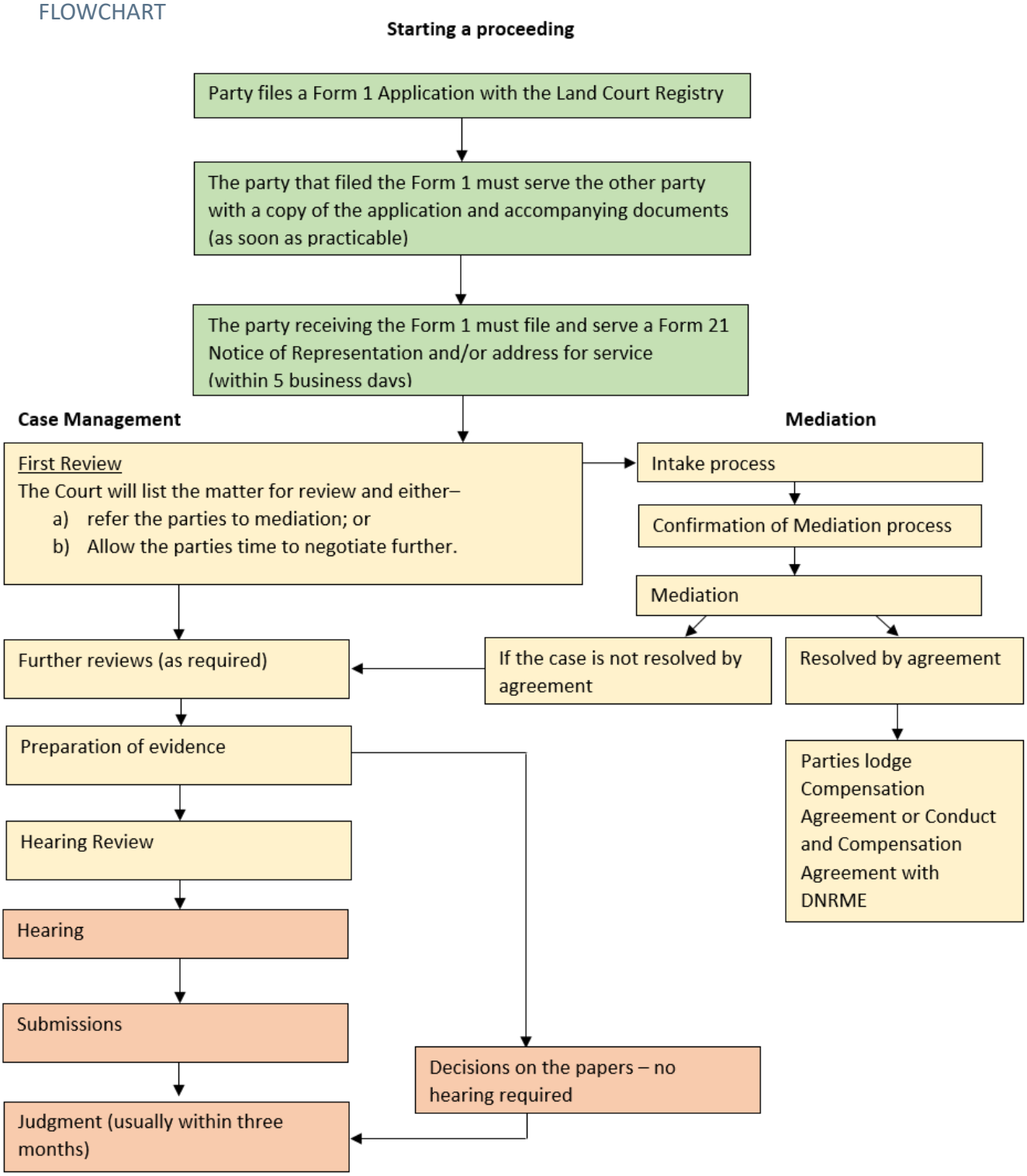
13. In summary, the Court's procedure may include the following steps–
    a) assisting the parties to identify the issues;
    b) encouraging the parties to engage in ADR, if appropriate;
    c) setting timeframes for the parties to obtain evidence, including *expert evidence*, where required;
    d) making arrangements for the hearing; and
    e) conducting the hearing, if required.
14. The Court does not perform an investigative role and will not conduct its own inquiries. It must consider only the evidence the parties provide and the *submissions* made during the hearing.

    Example–

    A resource activity restricts an eligible claimant's ability to use the land for running cattle. The eligible claimant wants compensation for the loss of use of that land. The eligible claimant has not filed a valuation report or statement that proves the value of the land lost. The Court will have no evidence to support the eligible claimant's claim and, therefore, the Court may not be able to give the eligible claimant compensation for the loss of use of the land.

OVERVIEW OF THE COURT'S PROCESS FOR DECIDING COMPENSATION DISPUTES AND CONDUCT AND COMPENSATION DISPUTES

FLOWCHART



Starting a proceeding

THE PARTIES

Mineral Resources Act 1989

15. The miner (the person or company applying for or currently holding a mining claim or a mining lease) is the *applicant* for the *proceeding*.
16. The landholder is the *respondent* for the proceeding.

Mineral and Energy Resources (Common Provisions) Act 2014

17. The resource authority holder is the applicant for the proceeding.
18. The eligible claimant is the respondent for the proceeding.

APPLICATION

19. Any party may apply to the Court by filing a Form 01A Originating Application.
20. The party that files the Form 01A must serve a copy of it, and any accompanying documents, on the other party as soon as practicable.
21. The party that receives the Form 01A must, within five business days of receipt, *file and serve* a Form 21 Notice of Representation and/or Address for Service.

HOW A PARTY CAN BE REPRESENTED

22. Any party can appear in person (without a representative), or appoint a lawyer or agent to represent them.
23. If a party appears in person, the Court will make reasonable efforts to assist them to understand the Court's procedure, but cannot provide legal advice, including advice on how a party should present their case.
24. The Court expects all parties and their representatives, if any, to–
    a) act honestly, efficiently, and expeditiously in a referral;
    b) be aware of and comply with this Practice Direction, any other relevant Practice Directions, and the provisions regarding procedure in the *Land Court Act 2000* and the *Land Court Rules 2000*;
    c) observe the orders and directions of the Court; and
    d) not abuse the Court's process.

Documents in a proceeding

FOR ALL DISPUTES

25. The following documents[6] must be filed either with the Form 01A application, or filed by the miner/resource authority holder within 10 days of filing the Form 01A–

a) a *Mines Online Public Inquiry Report*;

b) a map showing tenure area and access land; and

c) a copy of any *environmental authority* issued under the *Environmental Protection Act 1994* for the mining lease, mining claim or resource authority.

IN ADDITION, FOR COMPENSATION DISPUTES

d) information and maps showing which areas of the mining lease or mining claim is situated on which underlying land tenures;

e) a copy of the application for grant or renewal of a mining lease or mining claim;

f) a copy of any amendment to that application after it was lodged;

g) a copy of the certificate of application for the mining lease or mining claim;

h) any Court instruction or recommendation in respect of the mining lease or mining claim;

i) a copy of any previous application or referral to the Court for a determination of compensation for the tenure area and access land for this mining lease or mining claim; and

j) a copy of any prior compensation agreement or court determination of compensation for the tenure area and access land for this mining lease or mining claim.

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6 Document is defined in the *Evidence Act 1977* Sch 3.

DOCUMENTS IN A PROCEEDING

IN ADDITION, FOR CONDUCT AND COMPENSATION DISPUTES

k) a copy of the resource authority;

l) a copy of the certificate of application for the resource authority;

m) any Court instruction or recommendation in respect of the resource authority;

n) a copy of any previous application to the Court for determination of a CCA for the tenure area; and

o) a copy of any prior CCA or court determination of a CCA for the tenure area.

FILED DOCUMENTS AND EXHIBITS

26. The Court will mark each document filed in accordance with paragraph [25] as a separate *exhibit* in the hearing.
27. Any other document filed before the hearing will be placed on the Court file but will not be evidence in the hearing unless a party asks the Court to admit the document as an exhibit.

DISCLOSURE OF DOCUMENTS

28. A party may apply for orders for *disclosure* of documents by any person, including a party or a non-party.
29. The relevant provisions of the *Uniform Civil Procedure Rules 1999* apply.

Reviews

THE FIRST REVIEW

30. As soon as practicable after the Form 21 has been filed, the Court will list the application for a *review* to discuss the case management of the proceeding.
31. The review will be held in Brisbane. If the parties live in regional Queensland, they have leave to attend the review by telephone. If a party wishes to attend by telephone, they must advise the Court of the telephone number the Court can use to call them by 4:00pm two business days before the review.
32. The purpose of the first review is–
    a) for the parties to inform the Court about their progress in negotiating an agreement and, in particular, whether agreement has been reached;
    b) for the Court to–
        i. assist self-represented parties to understand the Court's process and procedure;
        ii. consider ADR and, in particular, use of the Court's *ADR Panel*;
        iii. decide whether to make directions about the preparation of evidence;
        iv. make any necessary directions to progress the proceeding.
33. If the parties have reached an agreement, but it has not been finalised, the Court will list the application for another review. The date for review will take into account the parties' estimate of the time required to finalise the agreement and lodge it as required.
34. If the parties want to continue negotiations without assistance, the Court will list the case for further review. The date for the further review will take into account the parties' estimate of time required to conclude negotiations. The parties must promptly advise the Court before the next review if–
    a) they reach agreement; or
    b) they have stopped negotiations without reaching agreement.

REVIEWS

FURTHER REVIEWS

35. After the first review, the Court will list the proceeding for further review to ensure that the parties comply with the Court's directions and are progressing to a resolution of the dispute.
36. If the Court has listed a further review to allow the parties to finalise their agreement, or to continue negotiations without assistance, it expects the parties to–
    a) actively use the time to negotiate or finalise their agreement; and
    b) advise the Court immediately if–
        i they reach agreement; or
        ii they have stopped negotiating without reaching agreement.
37. If the parties cannot reach agreement, or if the Court considers little progress has been made towards agreement, it may–
    a) refer the parties to *mediation*; or
    b) make directions for the final hearing of the proceeding.
38. At the request of any party, or on its own initiative, the Court may list the proceeding for review so it can make further or different case management directions.

PROPOSAL AND RESPONSE[7]

39. The Court may direct the parties to file and serve the following documents by dates fixed by the Court–
    a) a proposal by the miner or resource authority holder detailing–
        i. the amount of compensation they are willing to pay; and
        ii. if it is a conduct and compensation dispute, any conditions they propose to apply to the authorised activities under the resource authority; and
    b) a response by the landowner/the eligible claimant to the proposal.[8]
40. A party may attach documents to the proposal or response, but the attached documents must be page numbered and indexed.

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7 For guidance about the content of the statement, and the response to the statement, see Appendix A.

8 The response may detail a different amount of compensation or different conditions to those proposed.

MEDIATION

Mediation

41. The purpose of mediation is to facilitate discussions between the parties to–
    a) reach agreement or;
    b) if agreement is not reached, to narrow the issues in dispute.
42. Unless there are special circumstances, the mediation will be conducted by a *Convenor* from the Court's ADR Panel.[9]
43. Depending on availability, the mediation may be held in a courthouse close to the tenure area.

PARTICIPATION IN THE MEDIATION

44. Participation in mediation is under the supervision and control of the Mediator. Parties are expected to participate in good faith and must not impede the mediation.[10]
45. Unless the Mediator otherwise allows, a party must attend in person, with or without their legal or other representative.
46. 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 Mediator is informed of the process for endorsing a settlement and, after consulting with the other parties, considers it does not present an unacceptable limitation on the mediation.
47. Where appropriate, the Mediator may allow–
    a) other persons to also attend, such as expert witnesses; and
    b) participation by telephone, video or other remote access.

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9 For more details about the Court's ADR Panel, see Land Court of Queensland, *Practice Direction 1 of 2018 - ADR Panel Mediation*.

10 *Civil Proceedings Act 2011* s 44.

MEDIATION

INTAKE PROCESS

48. 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) any special requirements (such as cultural and language, physical access, audiovisual or other IT needs);
    c) who the parties wish to participate in the mediation, including expert witnesses or other advisors;
    d) any request relating to representation at the mediation (see paragraph [46]); and
    e) any requests about mediation arrangements made by any other party.

CONFIRMATION OF MEDIATION PROCESS

49. The Mediator will approve arrangements for the mediation, which will be provided in writing to the parties.
50. The arrangements will deal with any preconditions, expectations or particular requirements of the Mediator, and will include–
    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 statement 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, must be provided by any party and by what date;
    d) whether a party has leave to be represented by a person without authority to settle and, if so, confirmation of that party's process for endorsement of an agreement negotiated at the mediation.

WITHOUT PREJUDICE AND CONFIDENTIAL PROCESS

51. Mediation is conducted on a without prejudice basis. Information shared and documents prepared for the mediation are governed by the law relating to without prejudice communications.
52. The Mediator, the parties, and all other participants must respect the confidentiality of the mediation.[11]
53. If the dispute does not resolve at mediation, evidence cannot be given at the hearing of anything done or said or any admission made at the mediation, unless all parties agree.[12]

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11 The Mediator is bound by a requirement of confidentiality with limited exceptions, see *Civil Proceedings Act 2011* s 54.

12 See *Civil Proceedings Act 2011* s 53.

MEDIATION

CONCLUSION OF MEDIATION

54. The Mediator must file a Mediator's Certificate in the approved form.
55. Following completion of the mediation, whether the case is resolved or not, the Mediator must destroy all materials provided to or prepared by or for the Mediator for the sole purpose of the mediation.
56. If agreement is reached about some or all issues, the Mediator will discuss with the parties whether the parties will–
    a) propose consent orders to the Court to give effect to the agreement;
    b) finalise a private agreement; or
    c) document the agreement in some other way.
57. 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.
58. 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 matters[13] that will facilitate a fair, efficient and effective hearing, including–
    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; and
    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.
59. 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).

[13] The Mediator will use the Court's current Practice Directions and Model Directions, if any, to facilitate agreement about procedural matters.

Ending a proceeding before a hearing

COMPENSATION DISPUTE

60. The Court will finalise the proceeding and cancel any further reviews if–
    a) all parties advise the Court that an agreement has been registered with the DNRME; and
    b) DNRME advises the Court that the agreement has been lodged with and accepted by it.

CONDUCT AND COMPENSATION DISPUTE

61. If the parties advise the Court that an agreement has been reached, and the required notice has been given to record the CCA,[14] the parties may–
    a) ask the Court to formalise the agreement by consent orders; or
    b) file a notice of discontinuance; or
    c) at the next review, ask the Court for an order that the proceeding be dismissed.

[14] *Mineral and Energy Resources (Common Provisions) Act 2014*, s 92(1).

PREPARING FOR HEARING

Preparing for hearing

EVIDENCE

62. If the application must be decided by the Court, it will make directions that each party file and serve all evidence they intend to rely on at the hearing, including statements of evidence by any witness they propose to call at the hearing.
63. The parties must file and serve this evidence by the date ordered.
64. A person's statement of evidence is that person's *evidence in chief*, unless the court orders otherwise.
65. The parties must ensure that each person who has signed a statement of evidence is available to give oral evidence at the hearing.
66. Unless the Court gives leave, a party cannot rely on evidence that has not been filed and served in accordance with the Court's directions.
67. The Court may grant leave if there is a good reason why a party could not comply with the Court's directions. If it grants leave, the Court may also–
    a) adjourn the hearing to allow the other party a reasonable opportunity to consider the evidence;
    b) order the party seeking leave to pay the other party's costs arising from the late evidence; and
    c) make another order it considers necessary in the circumstances.

PREPARING FOR HEARING

EXPERT EVIDENCE

68. A party may rely on evidence from a person who is specially qualified to express their opinion about particular issues (expert witness).

    Example–
    A party may engage a valuer to give an opinion on what the land is worth, or a business adviser to comment on loss of profits.

69. An expert witness owes a duty to the Court to give independent evidence, which overrides the duty they owe to the party who has engaged them to give evidence. The *Guidelines for Expert Evidence in the Land Court*[15] provide information about the Court's expectations of expert witnesses and the parties who engage them.
70. If a party files a statement of an expert witness, the expert must be available at the hearing to give oral evidence or be questioned about the contents of their statement.
71. At the hearing, the Court may take evidence from expert witnesses in *a concurrent evidence* session. The *Guidelines for the Use of Concurrent Evidence* are contained in Practice Direction 2 of 2017. [16]
72. Unless the Court grants leave, a party cannot engage more than one expert witness for each area of expertise.
73. The Court will direct the process for expert evidence on a case-by-case basis taking into account the resources and preferences of the parties and the nature, scope and complexity of the issues.
74. The Court may list the application for *Court Managed Expert Evidence* (CMEE) if the nature and complexity of the evidence suggests that it would assist the Court and the parties. The Court may also list the application for a CMEE on the application of the parties.[17]

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15 Land Court of Queensland, *Guidelines for Expert Evidence in the Land Court*.

16 Land Court of Queensland, *Practice Direction 2 of 2017 – Guidelines for the Use of Concurrent Evidence*.

17 For more information about CMEE see Land Court of Queensland, *Practice Direction 3 of 2018 – Procedure for Court Managed Expert Evidence*.

THE HEARING

The hearing

ON THE PAPERS HEARINGS

75. In appropriate cases, the Court may, on its own initiative or at the request of a party, order that the application will be determined on the papers. If the Court orders the application to be determined on the papers, it will immediately allocate the case to a Member who must endeavour to deliver the judgment within three months of allocation.[18]

ORAL HEARINGS

76. Unless the case is listed for an on the papers hearing, the Court will set a date and place for an oral hearing.
77. The Court will list the proceeding for a hearing review at least one month prior to the first day of the hearing. At that review, the Court will confirm with the parties–
    a) that the proceeding is ready for hearing;
    b) that all evidence has been filed and all witnesses are available;
    c) that the time set aside for the hearing is sufficient;
    d) that the place for the hearing is appropriate;
    e) what arrangements to make for the *site inspection*.
78. Five working days before the hearing review the parties must–
    a) file in the Registry–
        i a list of issues;
        ii a proposed *hearing plan*, which identifies any issues relating to a site inspection; and
        iii a list of matters not in dispute;
    b) provide two copies of a hearing bundle to the Court, including an index to hearing bundle.

[18] See the Land Court's reserved judgments policy for more details.

THE HEARING

ORIENTATION

79. The hearing may commence with a site inspection.[19]
80. As early as is convenient during the hearing, the Associate to the Member conducting the hearing will display publicly available information about the land and the mining claim or lease using *Queensland Globe* (QGlobe). The information displayed using QGlobe will not be evidence in the proceeding unless it is put into evidence by one or more of the parties.

SUBMISSIONS

81. At the end of a hearing, the Court expects the parties to make submissions by addressing the Court in person. The Court may also make directions for the provision of submissions in writing.

[19] For more details about the Court's practices regarding site inspections, see Land Court of Queensland, Practice Direction 2 of 2018 – Site Inspections.

AFTER THE HEARING

After the hearing

82. After the hearing, the Member will make a decision and deliver a written judgment that gives the Court's reasons for the decision.
83. The Court will deliver the judgment by–
    a) for an on the papers hearing, sending a copy of the judgment to each party; or
    b) for an oral hearing, announcing the decision in open court and providing a copy of the judgment to the parties in court or, if a party does not attend court, by sending a copy of the judgment to that party.
84. The Court will give the parties as much notice as possible of the date on which the decision will be delivered. [20]

[20] See the Land Court's reserved judgments policy for more details.

Words and meanings

ADR Panel: The Court has established a panel of ADR Convenors who are accredited Mediators and have other specialist knowledge and experience.

Alternative Dispute Resolution (ADR): ADR is the use of alternative methods such as preliminary conferences, mediation, or *case appraisal* to resolve a dispute without the need for the Court to decide the case.

Authorised activity: An authorised activity is an activity that the holder of a mining lease or mining claim is entitled to carry out in relation to that mining lease or mining claim.

Case management: The Court actively supervises the parties' preparation for and conduct of the case and makes directions to facilitate resolving cases in a way that is accessible, fair, just, economical and expeditious.

Concurrent evidence: Concurrent evidence involves more than one expert witness giving evidence on the same issue in the same session. The Court's procedure for concurrent evidence is explained by Practice Direction 2 of 2017.[21]

Convenor: A convenor is a person who is qualified through a national accreditation scheme to chair and mediate a meeting between the parties and has a special skill in the Court's jurisdictions. This meeting may be either a preliminary conference or mediation. The convenor will guide the parties through the mediation process and assist the parties to communicate with each other.

Court Managed Expert Evidence (CMEE): A CMEE is a method where the Court supervises the briefing and meeting of experts and production of their joint expert report.[22]

Directions: The procedural orders made by the President or a Member regarding the actions the parties and others must take to progress the case.

Disclosure: Disclosure is the delivery by a party to a case to the other parties in the case, of documents that are relevant to the issues in dispute.

Determination on the papers: Decide the proceeding based on the documents filed in the Court and without an oral hearing.

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21 Land Court of Queensland, *Practice Direction 2 of 2017 – Guidelines for the use of Concurrent Evidence.*

22 Land Court of Queensland, *Practice Direction 3 of 2018 – Procedure for Court Managed Expert Evidence.*

WORDS AND MEANINGS

Eligible claimant: An eligible claimant is the owner or occupier of private land or public land that is in the authorised area of, or is access land for, the resource authority.

Environmental authority: Environmental authority means an environmental authority issued under s 195 of the *Environmental Protection Act 1994* that approves an environmentally relevant activity (such as a mining lease) applied for in an application.

Evidence: Evidence is the material that proves the facts which are the basis of a party's claim. Evidence will include:

a) the party's own statement, sworn on oath or affirmation that supports the facts in their compensation statement and attaching any documents that support their case (such as maps and photos);
b) statements from any witnesses who can support their contentions;
c) any oral evidence given under oath at the hearing.

Evidence in chief: Evidence in chief is the primary or main evidence that a party wants the Court to consider. For the Court to be able to consider the evidence, the party must convince the Court that it is both relevant and admissible during the hearing.

Exhibit: An exhibit is physical or documentary evidence that has been accepted by the Court as relevant and admissible evidence. Exhibits form a part of the public record for the case.

Expert witness: A person that has a specialised knowledge or skill in a particular field (such as agronomy or land valuation) that gives opinion evidence to the Court based on their specialised knowledge. Usually this is a person with an academic degree in the relevant field, or a long period of experience working in the field. The Court will only allow a person to give expert evidence when it is convinced that the person's knowledge, skill and expertise is of such a nature.

File and serve: To file and serve a document means to give the document to the Court so it can be placed on the Court file and to give a copy of that document (by post, email or personally) to the other parties at their address for service.

Guidelines for Expert Evidence in the Land Court: The Guidelines for Expert Evidence explain the Court's expectations of expert witnesses and its procedures for obtaining, documenting and using their evidence.

Guidelines for the Use of Concurrent Evidence: The Guidelines for the Use of Concurrent Evidence explain how the Court will hear two or more expert witnesses' evidence at the same time.

WORDS AND MEANINGS

Hearing plan: A hearing plan is a brief one to two page document that should set out: the order of witnesses being called, the names of each witness to be called, the time each witness will be called to give evidence, an estimate of time for each witness to give evidence, and an estimate of time required to cross-examine the witness. A hearing plan will also include an estimate of time for the site inspection, opening and closing submissions, and any other matters to be raised at the hearing.

Mines Online Public Inquiry Report: A report provided by MinesOnline as to the area, size, location and other feature of the mining lease.

Owner: the registered owner of freehold land, or a person who holds land from the State under an Act (other than an Act about mining or petroleum) under another kind of lease or occupancy (other than occupation rights under a permit under the *Land Act 1994*) of the land.

Parties: Unless stated otherwise, in this document, "parties" means a party to the case or the party's lawyer or agent. A party can be a person, company, organisation, government department, or State that has an interest in a case. Usually in compensation matters the parties will be the miner and the landowner.

Pleadings: Pleadings in a case define the issues to be decided in the action. Usually, it is a formal written statement of a party's claim or defence to another party's claim in a civil action.

Practice Direction: A procedural direction made by the President of the Court that applies to all cases referred to in the Practice Direction.

Procedural fairness: Acting fairly in decision-making by–

a) providing a fair opportunity for a party to present their case;

b) giving impartial consideration to the merits of the case;

c) acting on logically probative evidence.

Proceeding: The regular and orderly progression of a dispute, including all acts and events between the time of commencement and the judgment.

Queensland Globe (QGlobe): QGlobe is an online interactive tool that presents physical, geographical, and spatial data about a particular location in a map format.

Resource authority: A permit, claim, license, lease or authority may be a resource authority. For a complete list of rights which may be a resource authority, see section 10 of the MERCP Act.

WORDS AND MEANINGS

Resource authority holder: A resource authority holder is a person who holds, or has applied for, a resource authority.

Respondent: The legal person responding to an application or an appeal before the court.

Review: A review is a procedural hearing where the President or a Member reviews the progress of the case and makes procedural directions regarding the future management of the case.

Rules of evidence: Rules of evidence are a body of legal principles that govern whether evidence can be admitted during a court proceeding.

Site inspection: A site inspection involves the Court visiting an area of land that is relevant to the case. The Court will conduct a site inspection in accordance with Practice Direction 2 of 2018.

Submissions: Submissions are the arguments put forward (either orally or in writing) by a party in a hearing. They explain why the Court should make an order in a party's favour. They tie the facts to the law.

Surface access: This refers to land that is not being mined but is needed to access the land that is being mined.

Appendix A - Guide to proposal and response

The Land Court does not have *pleadings* which identify the issues in dispute between the parties. The proposal and response filed by the parties will, in some way, be a substitute for pleadings and, therefore, give the opposite party an understanding of what aspects of the agreement will need to be decided.

PROPOSAL

The Court can look at a number of factors when calculating compensation.[23] The proposal by a miner/resource holder, should address each of the factors listed in the relevant Act. It should give the landowner sufficient detail about the mining operation so that the landowner can understand how the activities will affect their use of the land and should include details about–

a) the timing of the mining operation–

    i whether the mine will operate all year or only on certain months; and
    ii when the operation will commence;

b) what areas within the tenure area will be mined, in what sequence, and what area of disturbance;
c) how many people will be involved in the operation;
d) what access is required, and how often will mining equipment/personnel travel the access areas;
e) what equipment will be used for the operation; and
f) what measures will be undertaken to prevent or limit damage to properties/watercourses/stock.

[23] *Mineral Resources Act* 1989 s 85, 280, 281.

APPENDIX A - GUIDE TO PROPOSAL AND RESPONSE

RESPONSE

Compensation

Landholders and eligible claimants should also look at the factors contained in the legislation when calculating compensation. Some factors to bear in mind are–

a) a landholder is not entitled to compensation for the value of the resource.
b) If a landholder is claiming a loss in the capital value of your land, you will need evidence about that.
c) If a landholder is claiming business losses, they will need evidence about that.
d) If a landholder is claiming management time, they will need to set out how that management time will be spent and a value for that management time.
e) Is there any consequential loss.
f) Accounting, legal or valuation costs necessarily and reasonably incurred to negotiate or prepare the agreement.

Conduct conditions

The Court can make an order including conditions about how the resource authority holder will conduct its activities for a CCA. However, it cannot make orders for conditions in determination of compensation under the MRA.[24]

[24] Nevertheless, the parties can make a private agreement for compensation disputes that does include those conditions.

PRACTICE DIRECTION NUMBER 1 of 2017

LAND COURT OF QUEENSLAND

CASE MANAGEMENT PROCEDURES FOR COMPENSATION DETERMINATIONS RELATING TO RESOURCE PROJECTS

Repeal of earlier Practice Directions

(1) This Practice Direction repeals and replaces Practice Direction 4 of 2013 and Practice Direction 6 of 2015.

Application and Purpose

(2) This Practice Direction sets out the case management procedures for the just and expeditious resolution of the following types of compensation matters under the *Mineral Resources Act 1989* (MRA) and the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERCP Act):

- referrals made to the Land Court pursuant to s 85 and s 85A of the MRA in respect of the grant and renewal of mining claims;
- referrals made to the Land Court pursuant to s 279, s 279A and s 281 of the MRA in respect of the grant and renewal of mining leases; and
- applications made to the Land Court pursuant to s 96(2), s 98 and s 100 of the MERCP Act in respect of conduct and compensation for land access.

(3) These procedures recognise that parties may wish to negotiate their own agreement instead of expending time and money on the court process. The Land Court is committed to facilitating the resolution of matters by agreement through the provision of alternative dispute resolution (ADR) processes at no cost to the parties.

(4) The Land Court also aims to ensure that matters are resolved in a timely manner in the interests of certainty and finality of proceedings.

(5) Priority will be given to applications under the MERCP Act which trigger access rights in favour of the resource authority holder.

Starting a Proceeding in the Land Court

(6) A proceeding may start by either referral or by application.

(7) Under the MRA, referrals to the Land Court are made by the Department of Natural Resources and Mines (DNRM) using the **Form 5 Referral**. Such referrals can occur in one of three ways:

- at the request of the mining claim or mining lease applicant / holder;
- at the request of the landholder;

- if neither party has requested the referral, by DNRM within 3 months of the events specified in s 85(12) or s 279(5) of the MRA.

(8) Under the MERCP Act, either party may apply to the Land Court using a **Form 1 Originating Application**.

(9) Regardless of how the proceeding starts, the Land Court will acknowledge receipt of the referral or application.

Identifying the Parties

(10) Regardless of how the proceeding is started in the Land Court or who instigates the proceeding:

- the resource authority holder / applicant is the **applicant** for the proceeding;
- the landholder is the **respondent** for the proceeding.

Supplying the Land Court with Information

(11) Within 10 days of the Land Court acknowledging receipt of the referral or application, the applicant (ie. the resource authority holder / applicant) must provide the Land Court with the following documents and information (unless already provided with the referral or application):

- a map showing the area of the resource authority and the access land for the authority;
- information and maps showing which areas of the resource authority are situated on which underlying land tenures;
- a copy of the application for grant, the renewal application or the issued resource authority (whichever is relevant);
- a copy of any compensation agreement or conduct and compensation agreement (CCA) made in respect of the resource authority;
- a copy of any environmental authority issued for the resource authority under the *Environmental Protection Act 1994*;
- a compensation statement detailing the amount of compensation that the resource authority holder / applicant is willing to pay having regard to:
  - in the case of a mining claim – the criteria set out in s 85(7) and (8) of the MRA
  - in the case of a mining lease – the criteria set out in s 281(3) and (4) of the MRA
  - in land access cases – the criteria set out in s 81(4) of the MERCP Act.

(12) The documents and information referred to above should be organised in chronological order, page numbered and be accompanied by an index in the following format:

Document Description	Date	Page Numbers

(13) The applicant must serve a copy of the documents and information on the respondent at the same time as the documents and information are filed with the Land Court.

Preliminary Conference

(14) A court officer will contact the parties to schedule a preliminary conference as soon as reasonably practicable. This may be held in the region, or may occur by telephone or other remote means.

(15) The purpose of the preliminary conference is to facilitate discussions between the parties in an attempt to reach agreement or at least narrow the issues in dispute.

(16) The preliminary conference will be chaired by either a Land Court Member or the Judicial Registrar.

(17) Each party must attend in person or be represented by a person with full authority to settle the proceeding. Where appropriate, the chairperson may allow:

- attendance by others, such as expert witnesses or other advisors;
- participation by telephone, video or other remote means.

(18) The party or representative attending the preliminary conference must:

- be familiar with the substance of the issues in dispute;
- be prepared to identify and discuss the issues in dispute in an attempt to negotiate a settlement;
- have authority to settle the matter or any issue in dispute.

(19) Each party must act reasonably and genuinely in the preliminary conference process.

(20) A preliminary conference is conducted on a 'without prejudice' basis. Evidence of anything said or any admission made at the conference is not admissible in any subsequent proceeding without the consent of the parties.

Conclusion of the Preliminary Conference Process

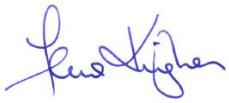
(21) If the parties agree about compensation at the preliminary conference, the Member or Judicial Registrar can make final orders disposing of the matter at the conference.

(22) If agreement is not reached, the matter will be listed for a directions hearing. The Member or Judicial Registrar presiding at the preliminary conference may also make directions, including directions about:

- providing further information, including any expert reports;
- scheduling further conferences;
- setting the process and timeframes for determining the matter.

Agreement at any time terminates proceedings

(23) The parties can reach agreement about compensation at any time, with or without the assistance of the Land Court. If agreement is reached, the parties can provide the Land Court with agreed orders which will bring the proceeding to an end.



Fleur Kingham
President
21 February 2017

PRACTICE DIRECTION NUMBER 2 of 2018

LAND COURT OF QUEENSLAND

SITE INSPECTIONS

1. This Practice Direction, issued pursuant to s 22(2) of the *Land Court Act 2000*, defines the process for site inspections in Land Court hearings. Most cases in the Land Court involve the value of land, the impact of activities on land or the terms of access to or use of land. Site inspections can provide useful context for the hearing.

2. In the ordinary course, the court will conduct a site inspection at or shortly before the commencement of a hearing. At the hearing review, the Member hearing the case will decide whether there will be a site inspection and, if so, will settle the arrangements in consultation with the parties.

3. Five working days prior to the hearing review, the parties must provide the associate to the Member hearing the case a proposed site inspection plan that deals with the following matters:
    a. the address of any site(s) to be inspected;
    b. the person or company in control of the site(s);
    c. the date and time proposed for the site inspection;
    d. the exact location of any site(s) to be inspected;
    e. the order in which any sites are to be inspected;
    f. how long the site inspection is expected to take;
    g. who will attend and their role in the site inspection;
    h. whether there are any special requirements for the site inspection (e.g. particular vehicles); and
    i. if any party seeks an order for evidence to be taken during a site inspection:
        i. the names of any proposed witness;
        ii. if a proposed witness is an expert, their field of expertise;
        iii. the proposed time and place for the evidence to be taken and an estimate of the length of the evidence;
        iv. their reasons for proposing evidence is taken during the site inspection; and
        v. the attitude of any other parties to their request.

4. During a site inspection, a party or their representative may:
    a. draw the Member's attention to an area, item, feature or condition;
    b. ask the Member to specifically observe something about that area, item, feature or condition;
    c. identify in what way the area, item, feature or condition relates to an issue for the hearing; and
    d. identify which witness(es) will give evidence about it.

    However, in doing so, what a party or their representative says to the Member is not evidence in the hearing.

5. Unless ordered prior to the site inspection, the Court will not take evidence from any witness during a site inspection. If an order is made for evidence to be taken during a site inspection:
    a. evidence will only be taken from witnesses specified in the order and only about topics specified in the order; and
    b. the associate or another court officer will record the evidence on a portable recording device provided by the court.

6. Unless otherwise ordered, an Authorised Officer of the Department of Natural Resources, Mines and Energy (NRME Officer) will escort the court party during site inspections for hearings of objections to the grant of resource tenures and environmental authorities; or for access to land and compensation for the grant of resource tenures.

7. If paragraph 6 applies, the associate to the Member hearing the case will identify the NRME Officer who will escort the court party and advise the parties, and will keep the NRME Officer informed about arrangements for the site inspection.

8. Prior to the site inspection, the parties must:
    a. agree on who will lead the site inspection; and
    b. provide the Land Court Registry and, where applicable, the NRME Officer, with a map that shows the meeting point and any sites to be inspected, numbered in the order in which they will be inspected.

9. During the site inspection, the person in control of any site[1] to be inspected is responsible for:
    a. ensuring the site is safe for inspection and complies with the requirements of relevant acts and regulations;[2]
    b. advising the court as soon as practicable of any special site requirements that it cannot provide;[3]
    c. providing access to a reasonable range of facilities;[4] and
    d. if necessary, conducting an induction before the court party enters the site.[5]

Fleur Kingham
President
19/03/2018

[1] For example, the holder of a mining lease will be in control of the mining lease area.
[2] *Work Health and Safety Act 2011; Coal Mining Safety and Health Act 1999; Petroleum and Gas (Production and Safety) Act 200; and Mining and Quarrying Safety and Health Act 1999 and associated regulations*
[3] Such as walking boots, protective clothing, hard-hat, 4WD vehicle etc.
[4] Such as water, shelter and toilet facilities.
[5] An induction may be required if the site inspected is under active mining.

PRACTICE DIRECTION NUMBER 7 of 2015

LAND COURT OF QUEENSLAND

FILING WRITTEN SUBMISSIONS

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(1) The purpose of this practice direction is to ensure that where written submissions are presented by or on behalf of a party:

   (a) the submissions will be retained on the court file in relation to the matter, and be available for future reference in the matter; and
   (b) the submissions are available for search and copy under Rules 981 and 980 of the Uniform Civil Procedure Rules 1999.

(2) Unless the court otherwise orders, it will therefore be taken that where written submissions are presented by or on behalf of a party in a matter, there is a concurrent grant of leave that they be filed and read.

(3) In such situations, the attending Deputy Registrar, or other proper officer of the court, will endorse the file in relation to the matter, recording the filing and reading of the submissions and identifying the submissions (as to the relevant party, and date), and will place a copy of the submissions on the file in the appropriate place.

(4) Where such submissions are presented, two copies should be provided, one for the file and one "working copy" for the Member.

Carmel MacDonald
President
9 September 2015

LAND COURT OF QUEENSLAND

PRACTICE DIRECTION No. 5 of 2009

Form of address in Court

From 4th September 2009 the President and Members of the Land Court are to be addressed as "Your Honour" during Court hearings.

Carmel MacDonald
President
4th September 2009