

SUPREME COURT OF QUEENSLAND

COMMERCIAL LIST NOTE ABOUT DRAFT DIRECTIONS (TO BE ADAPTED TO THE CIRCUMSTANCES OF THE CASE)

Parties to confer

Alternative A

1. By ... 202..., the parties are to confer for the purpose of:
 - (a) resolving or narrowing the issues in dispute and identifying the real issues that remain in dispute;
 - (b) agreeing a document plan;
 - (c) possible referral to alternative dispute resolution;
 - (d) agreeing trial directions; and
 - (e) agreeing a trial plan.

Alternative B

1. By ... 202..., the parties are to confer for the purpose of resolving or narrowing the issues in dispute, identifying the real issues that remain in dispute, and agreeing steps and directions for the just and expeditious resolution of those issues at a minimum of expense.

Alternative C

1. By ... 202..., the parties are to confer for the purpose of resolving or narrowing the issues in dispute, identifying the real issues that remain in dispute, and agreeing steps for the just and expeditious resolution of those issues at a minimum of expense.
2. The legal practitioners with the conduct of the trial of the proceeding, and each party or a representative of each party who is familiar with the issues in dispute shall attend the conference, unless excused from doing so by the Court.
3. Such conference may be in person, by videoconference or by telephone conference.

4. Part or all of the conference may be held “without prejudice” by express agreement of the parties.
5. The parties may agree to the appointment of an independent person to facilitate the conference.

Alternative D

1. By ... 202..., the parties are to confer (either in person or by telephone) and propose:
 - (a) a document plan, which will address a process for the efficient management of both paper and electronic documents in the proceeding;
 - (b) the manner in which lay evidence is expected to be presented (e.g., witness summaries, witness statements, affidavits or a combination of the same);
 - (c) the preparation and presentation of expert evidence (if any), and if expert evidence is to be given, the questions or questions any expert is to address, the appointment and briefing of a single joint expert or the briefing of the parties’ experts, and for experts to confer at an early stage so as to avoid unnecessary expense and duplication of effort;
 - (d) mediation and its timing;
 - (e) trial directions, including directions about witness summaries, witness statements and the like, and the manner in which documents are to be presented and managed at the trial; and
 - (f) a trial plan that will enable, among other things, the expected duration of the trial to be reliably estimated, for the matter to be set down for trial, and directions made as to where evidence is to be heard (e.g., whether some witnesses give their evidence by phone or video-link).

Report as to status

Alternative A

1. By ... 202..., the parties shall provide a brief report to the Associate to Justice ... (email: [associate.\[insert_name\]@courts.qld.gov.au](mailto:associate.[insert_name]@courts.qld.gov.au)) about the current status of the matter and how it is intended to progress the proceeding to resolution.

2. The matter be listed for review on a date to be fixed after provision of the report.

Alternative B

1. By ... 202..., the parties shall provide a report to the Associate to Justice ... (email: [associate.\[insert name\]j@courts.qld.gov.au](mailto:associate.[insert name]j@courts.qld.gov.au)).
2. The report should address:
[delete one or more of the following, as appropriate, or add additional topics, as appropriate]
 - (a) the real issues in dispute;
 - (b) the current status of the proceeding;
 - (c) how it is intended to progress the proceeding to resolution;
 - (d) the directions sought;
 - (e) a document plan;
 - (f) expert evidence;
 - (g) alternative dispute resolution;
 - (h) the trial of the proceeding, including its expected duration;
 - (i) steps to reduce the length of any trial; and
 - (j) any other matters that will facilitate the just and expeditious resolution of the real issues in the proceedings at a minimum of expense.
3. The matter be listed for review on a date to be fixed after provision of the report.

Alternative C

1. By ... 202..., the parties shall provide a report to the Associate to Justice ... (email: [associate.\[insert name\]j@courts.qld.gov.au](mailto:associate.[insert name]j@courts.qld.gov.au)) which addresses:
 - (a) a document plan, that will provide a process for the efficient management of both paper and electronic documents in the proceeding;
 - (b) the manner in which lay evidence is expected to be presented (e.g., witness summaries, witness statements, affidavits or a combination of the same);
 - (c) the preparation and presentation of expert evidence (if any), and if expert evidence is to be given, the questions or questions any expert is to address, the appointment and briefing of a single joint expert or the

briefing of the parties' experts, and for experts to confer at an early stage so as to avoid unnecessary expense and duplication of effort;

- (d) mediation and its timing;
- (e) trial directions, including directions about witness summaries, witness statements and the like, and the manner in which documents are to be presented and managed at the trial; and
- (f) a trial plan that will enable, among other things, the expected duration of the trial to be reliably estimated, for the matter to be set down for trial, and directions made as to where evidence is to be heard (e.g., whether some witnesses give their evidence by phone or video-link).

Alternative Dispute Resolution

1. By ... 202..., the parties formulate directions for the mediation of the matters in dispute in the proceeding, or for some other form of alternative dispute resolution, and submit a referral order.
2. The parties provide a brief report to the Associate to Justice ... (email: [associate.\[insert name\]j@courts.qld.gov.au](mailto:associate.[insert name]j@courts.qld.gov.au)) as to the status of the matter within 7 days of the conclusion of any mediation.

Document plan

1. The parties are to adopt a proportionate and efficient approach to the management of both paper and electronic documents in the proceeding.
2. The parties confer and agree directions in relation to documents including, if appropriate, directions that will:
 - (a) provide for the early identification and exchange of critical documents, being a limited number of documents that are likely to be tendered at any trial and are likely to have a decisive effect on the resolution of the matter;
 - (b) require each party to inform the other parties in a concise written statement of the extent of the searches for documents that they propose to undertake, or have undertaken;
 - (c) defer disclosure until the real issues in dispute are identified, and possibly until after the parties have served their evidence;
 - (d) limit disclosure to specified documents or classes of documents;

- (e) reflect a practical, cost-effective and proportionate document plan that the parties have agreed or endeavoured to agree; and
 - (f) facilitate any trial being conducted as an eTrial, including in accordance with the Supreme Court’s eTrials program.
3. By ... 202..., the parties shall provide to the Associate to Justice ... (email: [associate.\[insert name\]j@courts.qld.gov.au](mailto:associate.[insert name]j@courts.qld.gov.au)) a document plan and proposed directions in relation to documents.

Document and disclosure directions

1. The parties are to adopt a proportionate and efficient approach to the management of both paper and electronic documents in the proceeding.
2. The parties are relieved from the duty of disclosure except to the extent set out in the document plan and in these directions, until further order of the Court.

Critical Documents draft directions and guidelines

A guide to the kind of Critical Documents directions that the parties might agree appears below:

1. By ... 202... the parties are to exchange “critical documents” being those documents in the possession or under the control of the party after a reasonable search and that are likely to be tendered at trial and to have a decisive effect on the resolution of the matter. They include documents that are either supportive or adverse to a party’s case.
2. The number of such documents to be exchanged by each party should not exceed ...[insert number]...
3. At the time critical documents are exchanged a party shall provide a statement that:
 - sets out the extent of the search that has been undertaken to locate critical documents;
 - draws attention to any particular limitations on the extent of the search which were adopted for proportionality reasons and give the reasons why the limitations were adopted (e.g., the difficulty or expense that a search not subject to those limitations would have entailed or the marginal relevance of categories of documents omitted from the search);
 - certifies that documents that are considered to be adverse to the party’s case and that have been located by the search, or which are otherwise known to the party, have been included.

- is based on the form of Disclosure Statement contained in Appendix B in the Guidelines for the Management of Documents during Litigation in the Supervised Case List.

Specific disclosure directions

Parties are encouraged to develop directions that require disclosure of specified requested documents or classes of documents in accordance with a document plan, rather than seek orders for general disclosure.

Experts

See also Commercial List Note about Expert Evidence.

[General direction re appointment and reporting]

1. By ... 202..., the parties shall provide to the Associate to Justice ... (email: [associate.\[insert name\]j@courts.qld.gov.au](mailto:associate.[insert name]j@courts.qld.gov.au)) a draft consent order containing proposed directions for:
 - (a) the appointment of an expert to enquire into questions that are identified in the proposed directions;
 - (b) the remuneration of the expert;
 - (c) the briefing of the expert;
 - (d) the expert to report; and
 - (e) any other matter that is necessary to facilitate the timely provision of expert evidence.

[Directions for experts to confer, etc.]

1. By ... 202..., the parties shall provide to the Associate to Justice ... (email: [associate.\[insert name\]j@courts.qld.gov.au](mailto:associate.[insert name]j@courts.qld.gov.au)) their proposals and draft directions in relation to expert evidence including:
 - (a) the formulation of the issue or issues to which expert opinion is to be directed;
 - (b) the assumptions upon which the expert opinion is to be based;
 - (c) the briefing of experts, including the provision of relevant documents, suitably arranged;

- (d) the provision, upon reasonable request from the experts, of additional information or instruction;
- (e) for experts in the same field to confer once they have been properly briefed, are ready to participate in an expert conference and before they have drafted their reports;
- (f) for such a conference to address issues within their area of expertise, including issues of methodology, analysis and opinion, so as to identify matters of agreement and any matters about which they disagree;
- (g) for the experts jointly and concisely to report to the parties about matters where the experts are in agreement and any matters about which they disagree;
- (h) the preparation and delivery of expert reports;
- (i) for the experts to confer after they have read the other expert's report for the purpose of preparing a joint report about the outcome of their conference, that concisely identifies where they are in agreement and where they are not (in the latter case stating the basis of disagreement); and
- (j) the giving of expert evidence at trial, including directions for expert evidence to be given concurrently or consecutively.

Issues to be tried and avoiding costs of proving uncontentious facts and documents

1. By ... 202..., the parties are to prepare:
 - (a) a concise list of the issues to be tried (cross-referenced to pleadings);
 - (b) a concise list of the factual issues that require judicial determination; and
 - (c) a list of facts and matters that are not in contention,and submit the same to the Associate to Justice ... (email: [associate.\[insert name\]j@courts.qld.gov.au](mailto:associate.[insert name]j@courts.qld.gov.au)).

Trial plan and trial directions

Alternative A

1. By ... 202..., the parties confer for the purpose of developing a basic plan for the trial of the proceeding, and by ... 202... submit to the Associate to Justice

... (email: [associate.\[insert name\]j@courts.qld.gov.au](mailto:associate.[insert name]j@courts.qld.gov.au)) a basic trial plan that contains the estimated duration of openings; the estimated duration of each witness' evidence; the sequence in which witnesses will be called; the calling of expert witnesses (if any); the calling of witnesses by telephone or video-link; the estimated duration of submissions; and the estimated duration of the trial.

2. By ... 202..., the parties shall provide to the Associate to Justice ... (email: [associate.\[insert name\]j@courts.qld.gov.au](mailto:associate.[insert name]j@courts.qld.gov.au)) a trial plan and proposed directions in relation to the trial.

Alternative B

1. By ... 202..., the parties confer and agree about a plan for the trial including directions that will ensure that:

[delete one or more of the following, as appropriate, or add additional topics, as appropriate]

- (a) the issues to be tried are identified and agreed;
- (b) each party is in a position to inform the Court in a report or at a pre-trial review about the witnesses and documents they intend to rely upon to prove or disprove particular matters in dispute;
- (c) issues that are not to be tried are identified and the resolution of those issues recorded in a suitable form;
- (d) trial preparation is conducted efficiently;
- (e) a list of the persons whose evidence is to be relied on at trial is given well in advance of the trial;
- (f) a brief summary of the evidence of witnesses to be called is given well in advance of the trial, including:
 - (i) the full name and occupation and address of the person;
 - (ii) the curriculum vitae of any expert witness;
 - (iii) a brief summary of evidence to be given;
 - (iv) the estimated duration of evidence-in-chief of the witness; and
 - (v) whether the statement is suitable for exchange;
- (g) directions are given concerning a requirement for leave to be given for evidence to be adduced from any person not named in the list, and for

- leave to be given for evidence to be given that is not covered by the summary of their evidence;
- (h) witnesses who are not required for cross-examination are not inconvenienced;
 - (i) an estimate of the duration of the cross-examination of each witness required for cross-examination is given;
 - (j) the trial plan includes the estimated duration of openings; the estimated duration of each witness' evidence; the sequence in which witnesses will be called; the calling of expert witnesses; the calling of witnesses by telephone or video-link and the estimated duration of submissions;
 - (k) documents are efficiently managed at the trial, including whether the matter can and should be efficiently conducted as an eTrial;
 - (l) the length of any trial is reduced; and
 - (m) the trial finishes within its allocated dates.
2. By ... 202..., the parties shall provide to the Associate to Justice ... (email: [associate.\[insert_name\]@courts.qld.gov.au](mailto:associate.[insert_name]@courts.qld.gov.au)) a trial plan and proposed directions in relation to the trial.

Review and case conference

1. If the parties are unable to agree about the real issues that remain in dispute, matters that should not be in contention, the management of documents, a trial plan or trial directions, they may arrange a case conference before the Resolution Registrar with a view to resolving those matters at a minimum of expense before the review.
2. Otherwise, the matter will be reviewed on a date to be fixed in ... [insert month] 202... at 9.15am, with practitioners from outside the Brisbane metropolitan area having leave to make arrangements with the Associate to Justice ... to appear by video-link or phone.