

Practice Direction 3 of 2025

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.

Preliminary

3. The Court is committed to resolving disputes in a way that is fair and just. 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 Preliminary Conference held pursuant s 27B of the *Land Court Act 2000*.

Mediation Order

5. The Court may order an ADR Panel mediation at any stage of any case before the Court, 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.

The Mediator

7. The Mediator for an ADR Panel mediation must be an ADR Panel Convenor and is either:
 - (a) agreed upon and nominated by the parties; or
 - (b) nominated by the Judicial Registrar, in consultation with the parties, if they cannot agree.



Asking the Judicial Registrar to nominate a Mediator

8. The request must be:
 - (a) In the prescribed form¹;
 - (b) Emailed to ADRPANEL.Landcourt@justice.qld.gov.au; and
 - (c) Provided to each other party at the same time.
9. The Judicial Registrar may request further information or submissions from the parties before making the nomination.
10. The Judicial Registrar will provide the written nomination within 5 business days of the latest date on which they received material from the parties.
11. In making the nomination, the Judicial Registrar will 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 convenors on the ADR panel
 - (g) any other relevant matters raised by the parties.

Participation in the mediation

12. 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.
13. Unless the Mediator otherwise allows, a party must attend in person, with or without their legal or other representative.
14. 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.

¹ Refer to section 5 of *ADR Form 01 - Request for ADR Convenor* or section 5 of *ADR Form 01A – Response to Request for ADR Convenor*



15. 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.

The mediation process

16. The Mediator will advise the parties in writing of the arrangements for the mediation, including:
- (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) confirmation of the process by which a party who does not attend the mediation in person will endorse an agreement negotiated at the mediation (if any).
17. Any mediation is conducted on a without prejudice basis.
18. The Mediator, the parties, and all other participants must respect the confidentiality of the mediation.
19. 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.
20. 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.
21. 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.
22. The Mediator or any party may make a written request for further directions from the Court about arrangements for the mediation.

Ending a Mediation

Termination by the Mediator

23. 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.



24. The Mediator must give the parties 7 days' notice in writing before terminating the mediation but is not required to give reasons for doing so.

If the case is resolved by agreement

25. 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.

If the case is not resolved by agreement

26. 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 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;
 - (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.

The Mediator's Certificate

27. Whether the parties agree or not, the Mediator must file a Mediator's Certificate in the approved form. The Mediator must attach a copy of any agreement reached at mediation in a sealed envelope only to be opened by Court Order.

Commencement

28. This Amended Practice Direction takes effect from 28 March 2025.

Repeal

29. Practice Direction 1 of 2018 and Practice Direction 4 of 2020 are repealed.



PG Stilgoe OAM
President
28 March 2025



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.

