

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* (MERC 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 MERC 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 MERC 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 MERCPC 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 MERCPC 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