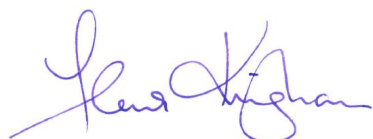


Digital Procedures in the Land Court

Practice Direction 5 of 2020

A handwritten signature in purple ink, appearing to read "FY Kingham".

President FY Kingham
Issued 11 December 2020

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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hearings)* and *Practice Direction 2 of 2019 – Provision of Electronic Documents to the Land Court*, which are repealed in whole.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

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

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

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

HEARING ARRANGEMENTS

- 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 document⁴ 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 form⁵ 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.

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

⁵ See Appendix A.

CASES PROCEEDING BY ETrial

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.

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

CASES PROCEEDING BY ETrial

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.

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	

