

AMENDED PRACTICE DIRECTION NO 4 OF 2020

SUPREME COURT OF QUEENSLAND

CASE FLOW MANAGEMENT – CIVIL JURISDICTION

- 1 This practice direction repeals and replaces Practice Direction No 4 of 2002 and Practice Direction No 17 of 2012 and commences on the date of publication.
- 2 **Objectives**
 - 2.1 Rule 5 of the Uniform Civil Procedure Rules (UCPR) provides:
 - (a) The purpose of these rules is to facilitate the just and expeditious resolution of the real issues in civil proceedings at a minimum of expense.
 - (b) Accordingly, these rules are to be applied by the courts with the objective of avoiding undue delay, expense and technicality and facilitating the purpose of these rules.
 - (c) In a proceeding in a court, a party impliedly undertakes to the court and to the other parties to proceed in an expeditious way.
 - (d) The court may impose appropriate sanctions if a party does not comply with these rules or an order of the court.
 - 2.2 This practice direction establishes a system to facilitate the just and timely disposition of proceedings, by monitoring the progress of individual proceedings and intervening when a proceeding is not progressing satisfactorily.
 - 2.3 This practice direction is based on an expectation that most proceedings will be ready for trial or otherwise resolved within 180 days of the filing of the defence.
 - 2.4 If the proceeding is not ready for trial or otherwise resolved within that timeframe, the court will impose directions to ensure steps are taken to prepare the proceeding for trial or to resolve the proceeding, with appropriate sanctions for non-compliance.
- 3 **Application of the practice direction and definitions**
 - 3.1 The practice direction applies to:
 - (a) civil proceedings instituted by claim (including renewal of a claim) in the Brisbane Registry and such other registries as the court or a judge may direct; and
 - (b) such other proceedings as the court or a judge may direct.
 - 3.2 It does not apply to proceedings on a separate list: for example, the Supervised Case List, the Commercial List, the Wills and Estates List or the Supervised Case List for Self-Represented Parties.
 - 3.3 In this practice direction:
 - (a) “evidence of the consent of all relevant parties” means:
 - (i) a copy of a proposed order, signed by each of the parties or their legal

representatives; or

(ii) an email or other written correspondence from each party, or their legal representative, stating that the party consents to the proposed orders (it is not sufficient simply to copy another party(ies) into an email);

(b) “plaintiff” includes a counter-claiming defendant or any other party having carriage of the proceeding.

3.4 In general, all correspondence relating to case flow management is by email:

(a) the case flow manager can be contacted at:

caseflowmanager@justice.qld.gov.au;

(b) the associate to the case flow judge can be contacted at:

associate.williamsj@courts.qld.gov.au.

4 An overview of the system

4.1 The case flow management system:

(a) provides for the identification of proceedings which are progressing slowly, with the aim of helping parties bring the proceedings to a timely resolution;

(b) is a form of proactive case management, which requires the parties to adhere to timelines to progress the proceeding and provides for intervention in the event of default; and

(c) assists in identifying proceedings which require or would benefit from more intensive case management, for example in terms of Practice Direction 11 of 2012 (Supervised Case List).

4.2 There is a case flow judge allocated to manage the case flow management list.

4.3 Case flow reviews will be conducted on the last Friday of every month or on such other date as is set by the court. The dates are listed in the Supreme Court trial division calendar which is available online at <https://www.courts.qld.gov.au/daily-law-lists/court-calendars>.

5 Case management notices

5.1 Where a request for trial date has not been filed 180 days after—

(a) the date the notice of intention to defend is filed; or

(b) where there are multiple defendants—the date the latest notice of intention to defend is filed,

the Registrar will send the parties a case flow management Intervention Notice (CFM1).

5.2 An Intervention Notice under this practice direction will be sent—

(a) to the email address provided by the party on the claim or defence or notice of change of address for service; or

(b) if no email address has been provided—

(i) the first notice will be sent by mail to the address for service;

(ii) a party receiving a notice from the case flow manager by mail must, within fourteen (14) days of the date of issue of the notice, file a notice of

address for service (Form 8) setting out an email address; and

(iii) all subsequent notices will be sent to the email address of the party.

- 5.3 The plaintiff must respond to an Intervention Notice within twenty-eight (28) days of the date of issue of the notice by—
- (a) if the matter has been resolved, filing a notice of discontinuance under rule 309; or
 - (b) if the matter has been settled, giving written notice that the proceeding has been settled under rule 308A; or
 - (c) if the matter is ready for trial, filing a request for trial date under rule 467; or
 - (d) if the matter is not ready for trial, after consultation with the other parties, submitting a plan to facilitate the timely determination of the proceeding (in accordance with paragraph 6 below).
- 5.4 Unless one of the steps referred to in subparagraph 5.3(a), (b), (c) or (d) is taken within twenty-eight (28) days of the date of issue of an Intervention Notice, the proceeding will be placed on the case flow management list, and listed for a directions hearing at the next available case flow review date. The parties will be advised of the listing by a further notice from the Registrar (CFM2). The parties must attend the directions hearing.
- 5.5 However, if, following a response to the CFM1 it appears to the case flow management judge that a matter would more appropriately be managed on another case management list, it will be transferred to that list for review.

6 Proposing plans and giving of directions

- 6.1 Where the plaintiff elects to submit a plan under subparagraph 5.3(d), the parties must confer as to the appropriate directions to ensure the proceeding will be prepared for trial. The plan must be comprehensive, adapted to the particular case and include specific dates for compliance. The plan may include orders for—
- (a) if no step has been taken in the proceeding for:
 - (i) 1 year—the giving of one month’s notice to every other party of the party’s intention to proceed in accordance with rule 389(1) of the UCPR;
 - (ii) 2 years—the bringing of an application to the court for an order that a step may be taken in accordance with rule 389(2) of the UCPR;
 - (b) if the proceeding is within the jurisdiction of the District Court or the Magistrates Court— a proposal for orders for the transfer the proceeding to that court, under s 25(2) of the *Civil Proceedings Act* 2011;
 - (c) the filing of amended pleadings, if necessary;
 - (d) the steps contemplated by Practice Direction 18 of 2018 (Efficient Conduct of Civil Litigation), including:
 - (i) agreement on a document management plan;
 - (ii) the exchange of list(s) of critical documents;
 - (iii) the creation of a Resolution Bundle;
 - (iv) a conference for the purpose of resolving or narrowing the issues in dispute;
 - (v) a process to record facts or matters which are not in dispute;
 - (vi) preparation of a list of the real issues in dispute; and

- (vii) preparation of a trial plan;
- (e) any disclosure or further disclosure, as well as how that disclosure should be made (having regard to the document management plan agreed between the parties);
- (f) the filing of any interlocutory applications;
- (g) an alternate dispute resolution plan, including, for example, the date for filing of a consent order for mediation and the date by which the mediation is to be conducted;
- (h) the giving of expert evidence in compliance with Practice Direction 2 of 2005 (Expert Evidence: Supreme Court) and Chapter 11, Part 5 of the UCPR, and in particular, for—
 - (i) the appointment of a joint expert in accordance with paragraphs 4 and 5 of the Practice Direction 2 of 2005; or
 - (ii) if that Practice Direction does not apply or the parties have satisfied the court that a joint expert should not be appointed—a conclave of experts as set out in rule 429B(1);
- (i) any other directions necessary to bring the matter to resolution; and
- (j) the filing of a request for trial date.

6.2 If the parties wish an order to be made on the papers, without the need to appear at a case flow review hearing, the plan must be submitted by emailing the following to the associate to the case flow judge associate.williamsj@courts.qld.gov.au, copying that email to the case flow manager (caseflowmanager@justice.qld.gov.au) and all other relevant parties to the proceeding, by 12 noon on the day before the case flow review hearing:

- (a) a draft consent order in the terms of the plan in Microsoft Word format;
- (b) if the plan submitted does not address a matter referred to in paragraph 6.1, an explanation for why it does not;
- (c) if there has been a failure to comply or a delay in complying with previous orders, an explanation for that non-compliance or delay; and
- (d) evidence of the consent of all relevant parties and, where applicable, an explanation as to why consent of one or more of the parties to the proceeding is not required (for example because judgment has been entered against them, or the proceeding has been discontinued against them).

6.3 After a plan has been submitted under paragraph 6.3, the case flow judge may:

- (a) make an order in terms of the plan, or otherwise as appropriate, on the papers; or
- (b) require the parties to appear before the judge in court at the next available case flow review hearing, for directions to be made.

6.4 If a party is unable to comply with orders that have been made, that party should apply to amend or vary the order, by emailing the following to the associate to the case flow judge (associate.williamsj@courts.qld.gov.au), copying that email to the case flow manager (caseflowmanager@justice.qld.gov.au) and all other relevant parties to the proceeding, before the date for compliance with the order:

- (a) a draft consent order, in Microsoft Word format, which proposes new orders;
- (b) an explanation for the proposed amendment;
- (c) a copy of the previous order(s) which the new draft consent order proposes to amend;

and

- (d) evidence of the consent (see definition in paragraph 3.3) of all relevant parties, and, where applicable, an explanation as to why consent of one or more of the parties to the proceeding is not required.

6.5 Upon submission of an amended order under paragraph 6.4, the case flow judge may:

- (a) make an order in terms of the draft proposed, or otherwise as appropriate, on the papers; or
- (b) require the parties to appear before the judge in court at the next available case flow review hearing for directions to be made.

7 Consequences of Non-Compliance

7.1 Non-compliance with this practice direction or directions made under it may, on the application of a party, or at the judge's own initiative, also result in:

- (a) an order under rule 371(2) (effect of failure to comply with rules);
- (b) an order under rule 374(5) (failure to comply with order);
- (c) a non-complying party being deprived of the costs of late compliance;
- (d) a non-complying party being ordered to pay the other party's costs thrown away by reason of the non-compliance, which may be fixed and payable immediately;
- (e) the proceeding being listed for trial notwithstanding non-compliance.

8 General

8.1 The orders which are made as part of the case flow management system are procedural. Substantive issues which require determination must be dealt with by making an interlocutory application, which will be heard in the usual way in the Applications jurisdiction.

8.2 If a proceeding is listed for case flow review, the parties or their legal representatives must appear and be in a position to make informed submissions in relation to proposed orders to progress the proceeding. If they do not attend, orders adverse to their interests may be made in their absence. Leave to appear by telephone will only be granted where exceptional circumstances prevent a party or their legal representative from attending.

8.3 The court may, at any time, of its own initiative, on notice to the parties, review the progress of a proceeding, and give directions to facilitate the efficient and timely determination of the proceeding.



Catherine Holmes
Chief Justice
6 September 2021