

PRACTICE DIRECTION NUMBER 18 OF 2018
SUPREME COURT OF QUEENSLAND

EFFICIENT CONDUCT OF CIVIL LITIGATION

1. Experience shows that in many cases the real issues to be tried are not identified and narrowed until the eve of trial or during the trial. This comes at a great cost to parties and to the public.
2. The just and expeditious resolution of the real issues in dispute at a minimum of expense requires:
 - a. The efficient management of documents at all stages of litigation;
 - b. The parties conferring for the purpose of:
 - i. resolving or narrowing the issues in dispute, identifying the real issues that remain in dispute and agreeing steps for their just and expeditious resolution;
 - ii. agreeing steps for the efficient management of documents;
 - c. Recording in a suitable form a short summary of the issues to be tried;
 - d. Recording in a suitable form facts that are not in contention; and
 - e. Developing a basic trial plan, which is revised as the matter proceeds to trial.

The efficient management of documents at all stages of litigation

3. Practitioners and litigants are directed to adopt a proportionate and efficient approach to the management of both paper and electronic documents at all stages of the litigation.
4. Parties must address document management as early as possible in litigation.
5. As soon as reasonably possible after the filing and service of a claim, and prior to filing a notice of appearance and defence, the parties are required to confer and agree a basic plan for the management of documents which deals with at least the following:
 - a. a document management protocol (including the agreed format(s) for documents); and
 - b. the provision of documents referred to in the pleadings.
6. The document plan is to be revised and developed as soon as reasonably possible after pleadings close, and as the proceeding progresses.
7. Parties should provide copies of documents as full text searchable, multi-page PDF files, unless there is a cost-effective and simpler alternative.
8. A form of Document Plan is set out as an **Appendix** to this Practice Direction. It is indicative only to assist parties to develop a Document Plan that is appropriate to the circumstances of a specific case.
9. Parties are encouraged to consent to an order pursuant to rule 224 that the parties be relieved, or relieved to a specified extent, of the duty of disclosure, until further order.

10. As part of an agreed document plan, the parties should focus at an early stage on undertaking reasonable searches with a view to locating and exchanging documents that are necessary to resolve the matter promptly and with a minimum of expense.
11. Parties should exchange at an early stage of a proceeding, and as soon as possible after the close of pleadings, a limited number of critical documents, with a view to facilitating the early resolution of the matter. Critical documents are those documents in the possession or under the control of a party of which the party is aware after a reasonable search and which 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. Subject to contrary directions or agreement, critical documents should be exchanged on a date to be fixed shortly after the close of pleadings.
12. The parties should consider the creation of a Resolution Bundle, ideally in a simple, electronic form, which contains only those documents that are likely to be beneficial in attempting to resolve the case and that are likely to have a decisive effect upon the resolution of the matter.
13. This Resolution Bundle:
 - a. May be supplemented with further essential documents following disclosure and other processes or a specific court order;
 - b. Should be reduced in size once issues are resolved or narrowed;
 - c. Should contain no more documents than are necessary to resolve the matter at that stage of the proceeding; and
 - d. Should be the basis for resolution of the matter at mediation or trial.
14. The excessive printing and copying of paper documents is to be avoided.
15. Litigants must utilise technology where possible to achieve efficiency. For example, litigants should investigate the use of technology to:
 - a. Create and exchange electronic lists of documents;
 - b. Inspect documents and other material;
 - c. Prepare for trial; and
 - d. Present evidence at trial.

In most cases, the efficient and cost effective management of documents at all stages of litigation may be enhanced by utilising the alternative UCPR Form 19.

Further guidance about the use of technology for the efficient management of documents during litigation is contained in Practice Direction 10 of 2011.

16. The incurring of unnecessary costs in searching for, reviewing and exchanging documents which are not directly relevant to the real issues in dispute in the proceeding is to be avoided.

17. The parties must ensure that all steps in relation to documents are proportionate having regard to:
 - a. The nature and complexity of the proceedings;
 - b. The amount at stake or the relief sought;
 - c. The real issues in dispute;
 - d. The stage the proceedings have reached;
 - e. The volume of potentially relevant documents;
 - f. The ease with which documents may be retrieved or reviewed;
 - g. The time and costs associated with the proposed steps; and
 - h. The likely outcome or benefits to be derived by taking the proposed steps and the extent to which these are likely to have a significant impact on the outcome of the proceedings.

Conferences to narrow the issues in dispute

18. As early as reasonably possible, or as directed by the court, the parties should 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.
19. 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, should attend the conference, unless excused from doing so by the court.
20. Such conference may be in person, by video-conference or by telephone conference.
21. Prior to the conference, the parties are expected to agree a short agenda.
22. Part or all of the conference may be held “without prejudice” by express agreement of the parties.
23. The parties may agree to the appointment of an independent person to facilitate the conference.

Avoiding the cost of proving facts and documents which should not be in contention

24. Parties may use formal Notices to Admit Facts or Documents. However, experience has shown that in many cases facts and documents which should not be in contention are not admitted until the eve of trial or in the course of trial.
25. Parties are expected to adopt a sensible and cost-effective approach to not requiring proof of matters which should not be in serious contention. A failure to do so may result in adverse costs orders against a party or a practitioner.
26. The manner in which facts which are not in contention are recorded should be agreed by the parties. For example, a party may prepare a list of facts or matters which will not be disputed at the pending trial.

A short summary of the issues to be tried

27. The pleadings remain the basis upon which the issues to be tried are formally identified. However, given the complexity of many pleadings and as an aid to efficient court management of cases, the parties should prepare a list of the real issues in dispute. The list should be concise, and in a form that is most useful to the Court. It may contain cross references to pleadings.
28. If the parties agree that certain matters have become “non-issues”, then the issues that are not to be tried should be identified and the resolution of those issues recorded in a suitable form (either in a formal amendment to pleadings or some other clear form).
29. If the parties are unable to agree about the real issues which remain in dispute, then they should seek to resolve any misunderstanding by requesting a case conference before the Resolution Registrar or a review/directions hearing before a Judge.

Trial plans and readiness for trial

30. A reliable trial plan ensures that:
 - a. Trials are allocated an appropriate number of hearing days;
 - b. Trials conclude within their allocated dates;
 - c. The costs of preparation for trial and trial are minimised;
 - d. Witnesses are not unnecessarily inconvenienced;
 - e. Expert witnesses in the same field give their evidence concurrently or consecutively, if possible; and
 - f. Trials are conducted, if appropriate, as electronic trials so as to reduce the length of trials and their cost.
31. As early as reasonably possible in the proceeding, the parties must confer for the purpose of developing a basic plan for the trial of the proceeding, and thereafter submit to the court a basic trial plan which contains the estimated duration of openings; the estimated duration of each witness’s 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.
32. Such a conference is to be attended by the counsel or solicitor with the responsibility for the conduct of the trial. The parties should critically consider the need to call and cross-examine certain witnesses if matters not in serious contention can be proven in some other form or admitted.
33. Such conference may be in person, by video-conference or by telephone conference.
34. The parties should agree, if possible, whether the evidence expected to be given by a witness should be previewed in a brief summary of evidence or some other form.

35. A realistic trial plan is essential for a matter to be set down for trial. Other matters which are important for the setting of a matter down for trial appear in the Readiness Checklist annexure to *Practice Direction No 9 of 2010*.
36. If the parties are in substantial disagreement about whether a matter is ready for trial or about the expected duration of a trial, they may request a case conference before the Resolution Registrar or a review/directions hearing before a Judge.
37. If the parties agree about the directions which are necessary for the matter to be set down for trial and for the efficient conduct of trial preparation and the trial, then proposed directions should be submitted in conjunction with a trial plan. This may permit trial directions to be made “on the papers” by a Judge or Registrar.

Court intervention and supervision

38. The costs of civil litigation will be increased by the unnecessary conduct of case conferences, reviews or interlocutory hearings. Judicial and court resources are finite, and the court seeks to make best use of its resources by:
 - a. Having parties resolve matters in contention so as to avoid the cost of court appearances;
 - b. Making use of the Resolution Registrar to resolve matters informally and quickly at a case conference;
 - c. Referring matters requiring judicial determination to a Supervised Case List Judge, a Judge sitting in the Applications List or (if allocated) the Trial Judge; and
 - d. Ensuring that the issue to be resolved at a case conference, review or interlocutory hearing is defined and able to be determined fairly and quickly.
39. Proceedings which are anticipated to require a significant level of court supervision should be placed on the Supervised Case List.
40. Where parties are unable to resolve significant differences about the conduct of a proceeding despite having conferred, appropriate use should be made of case conferences before the Resolution Registrar and reviews before a Supervised Case List Judge. Otherwise, the issue for judicial resolution having been defined, an application for specific orders or an application for directions should be made on a convenient date to a Judge sitting in the Applications List or, by prior arrangement with the Associate, to the Judge allocated to try the proceeding.



Catherine Holmes
Chief Justice
17 August 2018

SUPREME COURT OF QUEENSLAND

REGISTRY:
NUMBER:

Plaintiff: (NAME)

AND

Defendant: (NAME)

EXAMPLE DOCUMENT PLAN¹

Relief from disclosure²

1. The parties agree that an order be sought from the Supreme Court pursuant to rule 224 of the *Uniform Civil Procedure Rules 1999* (**UCPR**) that they be relieved of the duty of disclosure except to the extent set out in this Document Plan until further order of the Court. This will be a consent order prepared by the [insert party].

Preservation of documents

2. The parties agree to take reasonable steps to ensure that all documents which are potentially disclosable will be stored securely and preserved in their original format.

Document management protocol

3. The parties agree that the document management protocol will be in accordance with the alternative schedule in UCPR Form 19 using the eTrial Document Management Spreadsheet.
4. The Document IDs will be as follows:
 - (a) for the plaintiff's documents - [insert]; and
 - (b) for the defendant's documents - [insert].
5. The parties agree that:

¹ An initial document plan might only comprise "Preservation of documents", "Document management protocol" and "Documents referred to in pleadings".

² This may not be necessary for an initial document plan but should be considered as soon as reasonably possible after pleadings close.

- (a) disclosed documents will be delivered as electronic files, using their Document ID as the filename, together with a list prepared in accordance with the agreed document management protocol;
- (b) disclosed electronic documents will be exchanged [insert – for example, in their original native format/ as full text searchable, multi-page PDF files];
- (c) disclosed hard copy documents will be exchanged as full text searchable, multi-page PDF files;
- (d) reasonable steps will be taken to identify and remove duplicate electronic documents before exchange, with duplication being considered at a document group level (ie host and attachments) rather than at an individual level, using [insert details of steps – such as a specified hash function to identify duplicates];
- (e) court documents will be served as full text searchable, multi-page PDF files; and
- (f) disclosed documents provided to the court in an eTrial will be named using their Document ID and provided as full text searchable, multi-page PDF files.

Documents referred to in pleadings

6. Each party agrees to deliver copies of the documents referred to in its pleading in accordance with the agreed document management protocol within [insert] business days of the date that pleading is served.

Exchange of critical documents

7. The parties agree that the critical documents in this matter will be exchanged within 14 days of delivery of the Reply. The critical documents are those documents in the possession or control of a party that have been located after a reasonable search and are likely to be tendered at trial and have a decisive effect on the resolution of the matter. They are to include documents that either support or are adverse to a party's case. At this stage, the parties agree that a maximum of [50] documents will be produced as the critical documents.
8. The parties agree that at the same time as provision of the critical documents, they will provide a statement that sets out the searches that have been undertaken to

locate the critical and other relevant documents. The statement is to be signed and will:

- (a) set out the extent of the searches that were undertaken to locate critical and other relevant documents;
- (b) draw attention to any particular limitations on the extent of the search that may have been adopted for proportionality reasons as set out in the Supervised Case List Guidelines and give reasons for such limitation;
- (c) state that documents that have been located by the search and are considered to be adverse to a party's case, have been included in the critical documents or any further disclosure.

Scope of disclosure³

9. Subject to paragraph 10, the parties agree that disclosure will be limited to the following after conducting a reasonable search:

- (a) [insert as agreed]
- (b) the exchange of critical documents
- (c) the exchange of documents limited to the following categories/directly relevant to the following issues:
 - (i) [insert]

10. The parties agree that disclosure is not required of the following:

- (a) [insert – for example, categories or types of documents, or issues]

Reasonable searches⁴

11. The parties agree that reasonable searches include:

- (a) Searching hard copy documents in the following locations:

³ This may not be necessary for an initial document plan but should be considered as soon as reasonably possible after pleadings close. This may need to be revised as the proceeding progresses.

⁴ This may not be necessary for an initial document plan but should be considered as soon as reasonably possible after pleadings close. This may need to be revised as the proceeding progresses.

- (i) [insert physical locations – consider references to individuals]
 - (b) Searching electronic documents in the following locations using the following date ranges and search terms:
 - (i) [insert electronic locations – consider references to individuals] using the following date ranges and search terms:
 - A. [insert agreed date ranges];
 - B. [insert agreed search terms];
 - (ii) [insert other electronic locations] using the following date ranges and search terms:
 - A. [insert agreed date ranges];
 - B. [insert agreed search terms];
 - (c) [insert other search strategies]
12. The parties agree that they are not required to:
- (a) [insert – for example, restore deleted emails from backup files or otherwise search back up files]
 - (b) search the following physical and/or electronic locations:
 - (i) [insert]

Supplementary disclosure⁵

13. A party intending to request additional disclosure will submit to the other party, within an agreed timeframe or by a time directed by the Court, a request to produce documents.
14. A request to produce shall contain:
- (a) A description;

⁵ This may not be necessary for an initial document plan but should be considered as soon as reasonably possible after pleadings close.

- (i) of each requested document sufficient to identify it; or
 - (ii) in sufficient detail (including subject matter) of a narrow and specific requested category of documents that are reasonably believed to exist;
 - (b) A short statement as to how the documents requested are relevant to the case and material to its outcome; and
 - (c) Confirmation that the documents requested are not in the possession or control of the requesting party; and
 - (d) A short statement of the reasons why the requesting party assumes the documents requested are in the possession or control of the other party.
15. Within an agreed timeframe or by a time directed by the Court, the party to whom the request to produce is addressed shall produce the documents requested that are in its possession or control as to which it makes no objection.
16. If the party to whom the request to produce is addressed has an objection to producing some or all of the documents requested, it shall state the objection in writing to the other party within an agreed timeframe or a time directed by the Court. The reasons for such objection may be a failure to satisfy the requirements of paragraph 15 herein or any of the following reasons:
- (a) Lack of sufficient relevance to the case or materiality to its outcome;
 - (b) The likely time, cost and inconvenience involved in locating, reviewing and disclosing the documents or classes of documents is disproportionate in the circumstances;
 - (c) The relative importance of the issue to which the documents or classes of documents relate;
 - (d) The probable effect on the outcome of the proceeding of disclosing or not disclosing the documents or classes of documents;
 - (e) The loss or destruction of the document, with such loss or destruction to have been shown with reasonable likelihood to have occurred;
 - (f) Privilege;

- (g) The documents are not reasonably necessary to enable the Court to decide the issue to which the documents relate;
 - (h) There is another reasonably simple and inexpensive way of proving the matter to which the documents relate, including an admission by the party making the objection and the terms of the proposed admission; and
 - (i) Any other sufficient reason as to why the production of the documents is not required to facilitate the just and expeditious resolution of the real issues in the proceeding at a minimum of expense.
17. Upon the receipt of any such objection the parties shall consult with each other with a view to resolving the objection.

Resolution of disputes

18. The parties agree that if there is any dispute about the conduct of reasonable searches, the provision of documents or the need for additional documents, the party seeking action will send a letter to the other party specifying the matter in dispute within 14 days and the action that is requested, and the other party will respond within 7 days.
19. The parties agree that if there is still a dispute between the parties, the matter is to be referred to the Court for resolution at a case conference or hearing and that the issues for determination are to be limited to the matters identified in the correspondence.