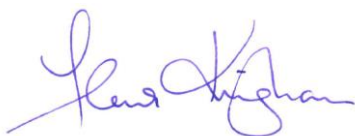


Procedure for deciding Compensation Disputes and Conduct and Compensation Disputes

Practice Direction 3 of 2019

A handwritten signature in blue ink, appearing to read "Peter Kingham".

*President FY Kingham
Issued 6 February 2019*

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Introduction

1. The *Practice Direction* explains the procedure the Court will use in proceedings about Compensation Disputes and Conduct and Compensation Disputes, so that they are dealt with in a way that is accessible, fair, just, economical, and expeditious.
2. This procedure recognises that *parties* may want to negotiate their own agreements, instead of spending money and time on the Court process. The Court is committed to facilitating the resolution of matters by agreement through *Alternative Dispute Resolution* (ADR) processes.
3. Terms that appear in *italics* in the Practice Direction are defined in the Words and meanings section of the document.

OVERVIEW OF THE COURT'S PROCESS FOR DECIDING COMPENSATION DISPUTES AND CONDUCT AND COMPENSATION DISPUTES

Overview of the Court's process for deciding Compensation Disputes and Conduct and Compensation Disputes

WHAT ARE COMPENSATION DISPUTES?

4. The *Mineral Resources Act 1989* (MRA) regulates the granting and renewal of mining claims and mining leases in Queensland. Those tenures cannot be granted or renewed unless compensation has been either–
 - a) agreed between the applicant miner and each person who is the *owner* of–
 - i land, the surface of which is the subject of the application; and
 - ii any *surface access* to the mining claim or lease land;¹ or
 - b) determined by the Court.
5. This Practice Direction applies to applications for mining claims or mining leases submitted to the Department of Natural Resources, Mines and Energy (DNRME) on or after 25 October 2018.² Practice Direction 1 of 2017³ applies to any applications for mining claims or mining leases submitted to the DNRME before 25 October 2018.

WHAT ARE CONDUCT AND COMPENSATION DISPUTES?

6. Under the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERC Act) an *eligible claimant* and a *resource authority holder* may enter into a conduct and compensation agreement (CCA) about:
 - a) when and how a resource authority holder may enter the land;
 - b) how *authorised activities* must be carried out; and
 - c) the resource authority holder's liability to compensate the eligible claimant for any loss or damage caused by the *authorised activity*.

¹ *Mineral Resources Act 1989* s 85, s 279(1)(a).

² *Mineral Resources Act 1989* s 840.

³ Land Court of Queensland, *Practice Direction 1 of 2017 – Case Management Procedures for Compensation Determinations Relating to Resource Project*.

OVERVIEW OF THE COURT'S PROCESS FOR DECIDING COMPENSATION DISPUTES AND CONDUCT AND COMPENSATION DISPUTES

7. If an eligible claimant and resource authority holder cannot agree on a CCA, either party can apply to the Court for the Court to—
 - a) decide a compensation amount;
 - b) impose conditions the Court thinks are appropriate for the exercise of the parties' rights;or
 - c) vary any existing conditions.
8. This Practice Direction repeals and replaces Practice Direction 1 of 2017,⁴ to the extent that the former Practice Direction applied to Conduct and Compensation Disputes.

THE COURT'S PROCEDURE

9. The Court—
 - a) is not bound by *the rules of evidence*;
 - b) may inform itself in the way it considers appropriate;
 - c) must act according to equity, good conscience the substantial merits of the application, and other matters it must consider; and
 - d) acts without regard to legal forms, practices, and technicalities that apply in other courts.⁵
10. The Court has a wide discretion as to its procedure, but must afford parties *procedural fairness*. The Court will use *directions* to prepare an application for hearing, having regard to the number, nature, and complexity of the issues in dispute. Directions are orders of the Court and the parties must comply with them.
11. The Court expects all parties to proceed in an expeditious way and to work constructively in Court processes as directed by the Court, including ADR.
12. The Court will take into account the parties' compliance (or non-compliance) with *case management* directions in deciding whether a party should pay the costs of any other party for all or any part of the proceeding.

⁴ Land Court of Queensland, *Practice Direction 1 of 2017 – Case Management Procedures for Compensation Determinations Relating to Resource Project*.

⁵ *Land Court Act 2000* s 7.

OVERVIEW OF THE COURT'S PROCESS FOR DECIDING COMPENSATION DISPUTES AND CONDUCT AND COMPENSATION DISPUTES

13. In summary, the Court's procedure may include the following steps–
 - a) assisting the parties to identify the issues;
 - b) encouraging the parties to engage in ADR, if appropriate;
 - c) setting timeframes for the parties to obtain evidence, including *expert evidence*, where required;
 - d) making arrangements for the hearing; and
 - e) conducting the hearing, if required.
14. The Court does not perform an investigative role and will not conduct its own inquiries. It must consider only the evidence the parties provide and the *submissions* made during the hearing.

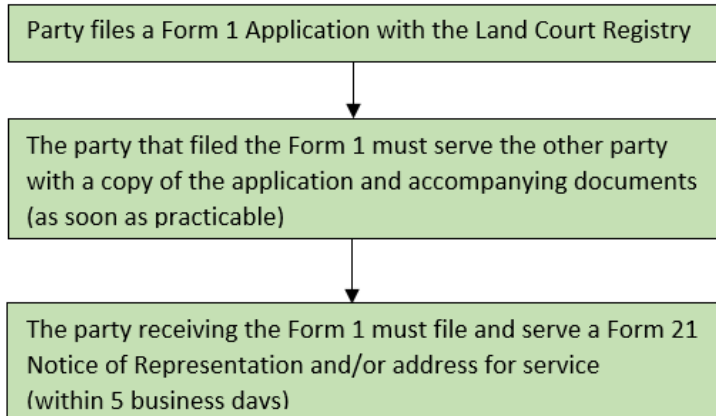
Example–

A resource activity restricts an eligible claimant's ability to use the land for running cattle. The eligible claimant wants compensation for the loss of use of that land. The eligible claimant has not filed a valuation report or statement that proves the value of the land lost. The Court will have no evidence to support the eligible claimant's claim and, therefore, the Court may not be able to give the eligible claimant compensation for the loss of use of the land.

OVERVIEW OF THE COURT'S PROCESS FOR DECIDING COMPENSATION DISPUTES AND CONDUCT AND COMPENSATION DISPUTES

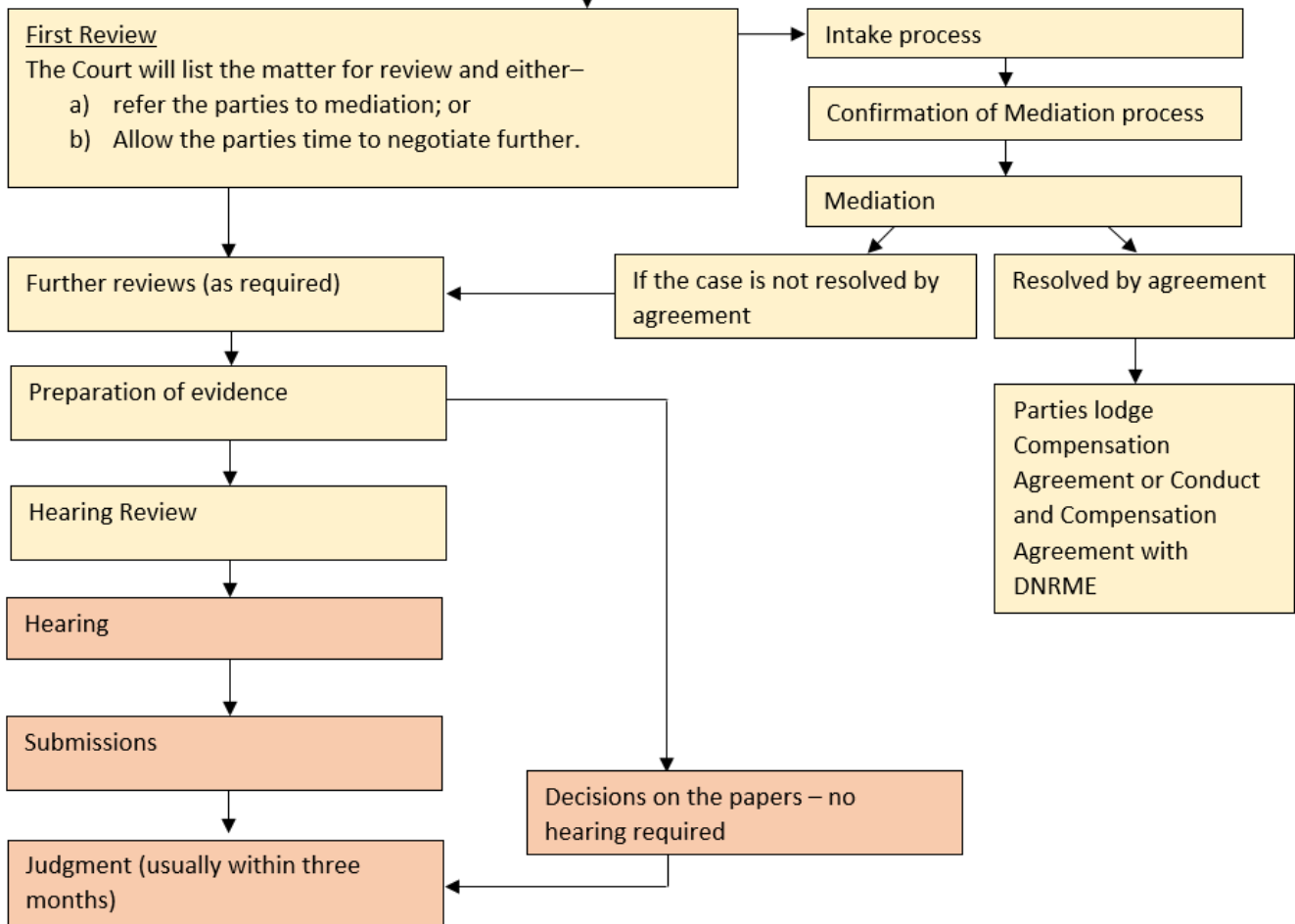
FLOWCHART

Starting a proceeding



Case Management

Mediation



STARTING A PROCEEDING

Starting a proceeding

THE PARTIES

Mineral Resources Act 1989

15. The miner (the person or company applying for or currently holding a mining claim or a mining lease) is the *applicant* for the *proceeding*.
16. The landholder is the *respondent* for the proceeding.

Mineral and Energy Resources (Common Provisions) Act 2014

17. The resource authority holder is the applicant for the proceeding.
18. The eligible claimant is the respondent for the proceeding.

APPLICATION

19. Any party may apply to the Court by filing a Form 1 Originating Application.
20. The party that files the Form 1 must serve a copy of it, and any accompanying documents, on the other party as soon as practicable.
21. The party that receives the Form 1 must, within five business days of receipt, *file and serve* a Form 21 Notice of Representation and/or Address for Service.

HOW A PARTY CAN BE REPRESENTED

22. Any party can appear in person (without a representative), or appoint a lawyer or agent to represent them.
23. If a party appears in person, the Court will make reasonable efforts to assist them to understand the Court's procedure, but cannot provide legal advice, including advice on how a party should present their case.
24. The Court expects all parties and their representatives, if any, to—
 - a) act honestly, efficiently, and expeditiously in a referral;
 - b) be aware of and comply with this Practice Direction, any other relevant Practice Directions, and the provisions regarding procedure in the *Land Court Act 2000* and the *Land Court Rules 2000*;
 - c) observe the orders and directions of the Court; and
 - d) not abuse the Court's process.

DOCUMENTS IN A PROCEEDING

Documents in a proceeding

FOR ALL DISPUTES

25. The following documents⁶ must be filed either with the Form 1 application, or filed by the miner/resource authority holder within 10 days of filing the Form 1:

- a) a *Mines Online Public Inquiry Report*;
- b) a map showing tenure area and access land; and
- c) a copy of any *environmental authority* issued under the *Environmental Protection Act 1994* for the mining lease, mining claim or resource authority.

IN ADDITION, FOR COMPENSATION DISPUTES

- d) information and maps showing which areas of the mining lease or mining claim is situated on which underlying land tenures;
- e) a copy of the application for grant or renewal of a mining lease or mining claim;
- f) a copy of any amendment to that application after it was lodged;
- g) a copy of the certificate of application for the mining lease or mining claim;
- h) any Court instruction or recommendation in respect of the mining lease or mining claim;
- i) a copy of any previous application or referral to the Court for a determination of compensation for the tenure area and access land for this mining lease or mining claim; and
- j) a copy of any prior compensation agreement or court determination of compensation for the tenure area and access land for this mining lease or mining claim.

⁶ Document is defined in the *Evidence Act 1977* Sch 3.

DOCUMENTS IN A PROCEEDING

IN ADDITION, FOR CONDUCT AND COMPENSATION DISPUTES

- k) a copy of the resource authority;
- l) a copy of the certificate of application for the resource authority;
- m) any Court instruction or recommendation in respect of the resource authority;
- n) a copy of any previous application to the Court for determination of a CCA for the tenure area; and
- o) a copy of any prior CCA or court determination of a CCA for the tenure area.

FILED DOCUMENTS AND EXHIBITS

- 26. The Court will mark each document filed in accordance with paragraph [25] as a separate *exhibit* in the hearing.
- 27. Any other document filed before the hearing will be placed on the Court file but will not be evidence in the hearing unless a party asks the Court to admit the document as an exhibit.

DISCLOSURE OF DOCUMENTS

- 28. A party may apply for orders for *disclosure* of documents by any person, including a party or a non-party.
- 29. The relevant provisions of the *Uniform Civil Procedure Rules 1999* apply.

Reviews

THE FIRST REVIEW

30. As soon as practicable after the Form 21 has been filed, the Court will list the application for a *review* to discuss the case management of the proceeding.
31. The review will be held in Brisbane. If the parties live in regional Queensland, they have leave to attend the review by telephone. If a party wishes to attend by telephone, they must advise the Court of the telephone number the Court can use to call them by 4:00pm two business days before the review.
32. The purpose of the first review is—
 - a) for the parties to inform the Court about their progress in negotiating an agreement and, in particular, whether agreement has been reached;
 - b) for the Court to—
 - i. assist self-represented parties to understand the Court’s process and procedure;
 - ii. consider ADR and, in particular, use of the Court’s *ADR Panel*;
 - iii. decide whether to make directions about the preparation of evidence;
 - iv. make any necessary directions to progress the proceeding.
33. If the parties have reached an agreement, but it has not been finalised, the Court will list the application for another review. The date for review will take into account the parties’ estimate of the time required to finalise the agreement and lodge it as required.
34. If the parties want to continue negotiations without assistance, the Court will list the case for further review. The date for the further review will take into account the parties’ estimate of time required to conclude negotiations. The parties must promptly advise the Court before the next review if—
 - a) they reach agreement; or
 - b) they have stopped negotiations without reaching agreement.

REVIEWS

FURTHER REVIEWS

35. After the first review, the Court will list the proceeding for further review to ensure that the parties comply with the Court's directions and are progressing to a resolution of the dispute.
36. If the Court has listed a further review to allow the parties to finalise their agreement, or to continue negotiations without assistance, it expects the parties to–
- a) actively use the time to negotiate or finalise their agreement; and
 - b) advise the Court immediately if–
 - i they reach agreement; or
 - ii they have stopped negotiating without reaching agreement.
37. If the parties cannot reach agreement, or if the Court considers little progress has been made towards agreement, it may–
- a) refer the parties to *mediation*; or
 - b) make directions for the final hearing of the proceeding.
38. At the request of any party, or on its own initiative, the Court may list the proceeding for review so it can make further or different case management directions.

PROPOSAL AND RESPONSE⁷

39. The Court may direct the parties to file and serve the following documents by dates fixed by the Court–
- a) a proposal by the miner or resource authority holder detailing–
 - i. the amount of compensation they are willing to pay; and
 - ii. if it is a conduct and compensation dispute, any conditions they propose to apply to the authorised activities under the resource authority; and
 - b) a response by the landowner/the eligible claimant to the proposal.⁸
40. A party may attach documents to the proposal or response, but the attached documents must be page numbered and indexed.

⁷ For guidance about the content of the statement, and the response to the statement, see Appendix A.

⁸ The response may detail a different amount of compensation or different conditions to those proposed.

Mediation

41. The purpose of mediation is to facilitate discussions between the parties to—
 - a) reach agreement or;
 - b) if agreement is not reached, to narrow the issues in dispute.
42. Unless there are special circumstances, the mediation will be conducted by a *Convenor* from the Court's ADR Panel.⁹
43. Depending on availability, the mediation may be held in a courthouse close to the tenure area.

PARTICIPATION IN THE MEDIATION

44. Participation in mediation is under the supervision and control of the Mediator. Parties are expected to participate in good faith and must not impede the mediation.¹⁰
45. Unless the Mediator otherwise allows, a party must attend in person, with or without their legal or other representative.
46. 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 Mediator is informed of the process for endorsing a settlement and, after consulting with the other parties, considers it does not present an unacceptable limitation on the mediation.
47. Where appropriate, the Mediator may allow—
 - a) other persons to also attend, such as expert witnesses; and
 - b) participation by telephone, video or other remote access.

⁹ For more details about the Court's ADR Panel, see Land Court of Queensland, *Practice Direction 1 of 2018 - ADR Panel Mediation*.

¹⁰ *Civil Proceedings Act 2011* s 44.

MEDIATION

INTAKE PROCESS

48. The Mediator will contact each party to discuss arrangements for the mediation, including–
- a) date, time, venue, and period allocated for the mediation (if not already fixed);
 - b) any special requirements (such as cultural and language, physical access, audiovisual or other IT needs);
 - c) who the parties wish to participate in the mediation, including expert witnesses or other advisors;
 - d) any request relating to representation at the mediation (see paragraph [46]); and
 - e) any requests about mediation arrangements made by any other party.

CONFIRMATION OF MEDIATION PROCESS

49. The Mediator will approve arrangements for the mediation, which will be provided in writing to the parties.
50. The arrangements will deal with any preconditions, expectations or particular requirements of the Mediator, and will include–
- 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 statement about the issues raised in the case and how they would like the case to be resolved; and if so, by what date;
 - c) what other material, if any, must be provided by any party and by what date;
 - d) whether a party has leave to be represented by a person without authority to settle and, if so, confirmation of that party's process for endorsement of an agreement negotiated at the mediation.

WITHOUT PREJUDICE AND CONFIDENTIAL PROCESS

51. Mediation is conducted on a without prejudice basis. Information shared and documents prepared for the mediation are governed by the law relating to without prejudice communications.
52. The Mediator, the parties, and all other participants must respect the confidentiality of the mediation.¹¹
53. If the dispute does not resolve at mediation, evidence cannot be given at the hearing of anything done or said or any admission made at the mediation, unless all parties agree.¹²

¹¹ The Mediator is bound by a requirement of confidentiality with limited exceptions, see *Civil Proceedings Act 2011* s 54.

¹² See *Civil Proceedings Act 2011* s 53.

MEDIATION

CONCLUSION OF MEDIATION

54. The Mediator must file a Mediator's Certificate in the approved form.
55. Following completion of the mediation, whether the case is resolved or not, the Mediator must destroy all materials provided to or prepared by or for the Mediator for the sole purpose of the mediation.
56. If agreement is reached about some or all issues, the Mediator will discuss with the parties whether the parties will—
 - a) propose consent orders to the Court to give effect to the agreement;
 - b) finalise a private agreement; or
 - c) document the agreement in some other way.
57. If the parties propose consent orders, the Mediator must include them in or attach them to the Mediator's Certificate. The Member managing the case will consider the proposed consent orders and either—
 - a) make the orders by consent on the papers; or
 - b) if they consider it necessary to change or refine the orders, hear from the parties before doing so.
58. 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 matters¹³ 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; and
 - 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.
59. If the parties agree on any procedural matters, the Mediator must specify the agreement in the Mediator's certificate and attach any agreed documents (such as statements of agreed facts or list of issues of fact and law).

¹³ The Mediator will use the Court's current Practice Directions and Model Directions, if any, to facilitate agreement about procedural matters.

ENDING A PROCEEDING BEFORE A HEARING

Ending a proceeding before a hearing

COMPENSATION DISPUTE

60. The Court will finalise the proceeding and cancel any further reviews if–

- a) all parties advise the Court that an agreement has been registered with the DNRME; and
- b) DNRME advises the Court that the agreement has been lodged with and accepted by it.

CONDUCT AND COMPENSATION DISPUTE

61. If the parties advise the Court that an agreement has been reached, and the required notice has been given to record the CCA,¹⁴ the parties may–

- a) ask the Court to formalize the agreement by consent orders; or
- b) file a notice of discontinuance; or
- c) at the next review, ask the Court for an order that the proceeding be dismissed.

¹⁴

Mineral and Energy Resources (Common Provisions) Act 2014, s 92(1).

Preparing for hearing

EVIDENCE

62. If the application must be decided by the Court, it will make directions that each party file and serve all evidence they intend to rely on at the hearing, including statements of evidence by any witness they propose to call at the hearing.
63. The parties must file and serve this evidence by the date ordered.
64. A person's statement of evidence is that person's *evidence in chief*, unless the court orders otherwise.
65. The parties must ensure that each person who has signed a statement of evidence is available to give oral evidence at the hearing.
66. Unless the Court gives leave, a party cannot rely on evidence that has not been filed and served in accordance with the Court's directions.
67. The Court may grant leave if there is a good reason why a party could not comply with the Court's directions. If it grants leave, the Court may also—
 - a) adjourn the hearing to allow the other party a reasonable opportunity to consider the evidence;
 - b) order the party seeking leave to pay the other party's costs arising from the late evidence; and
 - c) make another order it considers necessary in the circumstances.

PREPARING FOR HEARING

EXPERT EVIDENCE

68. A party may rely on evidence from a person who is specially qualified to express their opinion about particular issues (expert witness).

Example–

A party may engage a valuer to give an opinion on what the land is worth, or a business adviser to comment on loss of profits.

69. An expert witness owes a duty to the Court to give independent evidence, which overrides the duty they owe to the party who has engaged them to give evidence. The *Guidelines for Expert Evidence in the Land Court*¹⁵ provide information about the Court's expectations of expert witnesses and the parties who engage them.

70. If a party files a statement of an expert witness, the expert must be available at the hearing to give oral evidence or be questioned about the contents of their statement.

71. At the hearing, the Court may take evidence from expert witnesses in a *concurrent evidence* session. The *Guidelines for the Use of Concurrent Evidence* are contained in Practice Direction 2 of 2017.¹⁶

72. Unless the Court grants leave, a party cannot engage more than one expert witness for each area of expertise.

73. The Court will direct the process for expert evidence on a case-by-case basis taking into account the resources and preferences of the parties and the nature, scope and complexity of the issues.

74. The Court may list the application for *Court Managed Expert Evidence* (CMEE) if the nature and complexity of the evidence suggests that it would assist the Court and the parties. The Court may also list the application for a CMEE on the application of the parties.¹⁷

¹⁵ Land Court of Queensland, *Guidelines for Expert Evidence in the Land Court*.

¹⁶ Land Court of Queensland, *Practice Direction 2 of 2017 – Guidelines for the Use of Concurrent Evidence*.

¹⁷ For more information about CMEE see Land Court of Queensland, *Practice Direction 3 of 2018 – Procedure for Court Managed Expert Evidence*.

THE HEARING

The hearing

ON THE PAPERS HEARINGS

75. In appropriate cases, the Court may, on its own initiative or at the request of a party, order that the application will be determined on the papers. If the Court orders the application to be determined on the papers, it will immediately allocate the case to a Member who must endeavour to deliver the judgment within three months of allocation.¹⁸

ORAL HEARINGS

76. Unless the case is listed for an on the papers hearing, the Court will set a date and place for an oral hearing.

77. The Court will list the proceeding for a hearing review at least one month prior to the first day of the hearing. At that review, the Court will confirm with the parties–

- a) that the proceeding is ready for hearing;
- b) that all evidence has been filed and all witnesses are available;
- c) that the time set aside for the hearing is sufficient;
- d) that the place for the hearing is appropriate;
- e) what arrangements to make for the *site inspection*.

78. Five working days before the hearing review the parties must–

- a) file in the Registry–
 - i a list of issues;
 - ii a proposed *hearing plan*, which identifies any issues relating to a site inspection;
and
 - iii a list of matters not in dispute;
- b) provide two copies of a hearing bundle to the Court, including an index to hearing bundle.

¹⁸ See the Land Court’s reserved judgments policy for more details.

THE HEARING

ORIENTATION

79. The hearing may commence with a site inspection.¹⁹

80. As early as is convenient during the hearing, the Associate to the Member conducting the hearing will display publicly available information about the land and the mining claim or lease using *Queensland Globe* (QGlobe). The information displayed using QGlobe will not be evidence in the proceeding unless it is put into evidence by one or more of the parties.

SUBMISSIONS

81. At the end of a hearing, the Court expects the parties to make submissions by addressing the Court in person. The Court may also make directions for the provision of submissions in writing.

¹⁹ For more details about the Court's practices regarding site inspections, see Land Court of Queensland, Practice Direction 2 of 2018 – Site Inspections.

After the hearing

82. After the hearing, the Member will make a decision and deliver a written judgment that gives the Court's reasons for the decision.
83. The Court will deliver the judgment by—
 - a) for an on the papers hearing, sending a copy of the judgment to each party; or
 - b) for an oral hearing, announcing the decision in open court and providing a copy of the judgment to the parties in court or, if a party does not attend court, by sending a copy of the judgment to that party.
84. The Court will give the parties as much notice as possible of the date on which the decision will be delivered. ²⁰

²⁰ See the Land Court's reserved judgments policy for more details.

Words and meanings

ADR Panel: The Court has established a panel of ADR Convenors who are accredited Mediators and have other specialist knowledge and experience.

Alternative Dispute Resolution (ADR): ADR is the use of alternative methods such as preliminary conferences, mediation, or *case appraisal* to resolve a dispute without the need for the Court to decide the case.

Authorised activity: An authorised activity is an activity that the holder of a mining lease or mining claim is entitled to carry out in relation to that mining lease or mining claim.

Case management: The Court actively supervises the parties' preparation for and conduct of the case and makes directions to facilitate resolving cases in a way that is accessible, fair, just, economical and expeditious.

Concurrent evidence: Concurrent evidence involves more than one expert witness giving evidence on the same issue in the same session. The Court's procedure for concurrent evidence is explained by Practice Direction 2 of 2017.²¹

Convenor: A convenor is a person who is qualified through a national accreditation scheme to chair and mediate a meeting between the parties and has a special skill in the Court's jurisdictions. This meeting may be either a preliminary conference or mediation. The convenor will guide the parties through the mediation process and assist the parties to communicate with each other.

Court Managed Expert Evidence (CMEE): A CMEE is a method where the Court supervises the briefing and meeting of experts and production of their joint expert report.²²

Directions: The procedural orders made by the President or a Member regarding the actions the parties and others must take to progress the case.

Disclosure: Disclosure is the delivery by a party to a case to the other parties in the case, of documents that are relevant to the issues in dispute.

Determination on the papers: Decide the proceeding based on the documents filed in the Court and without an oral hearing.

²¹ Land Court of Queensland, *Practice Direction 2 of 2017 – Guidelines for the use of Concurrent Evidence*.

²² Land Court of Queensland, *Practice Direction 3 of 2018 – Procedure for Court Managed Expert Evidence*.

WORDS AND MEANINGS

Eligible claimant: An eligible claimant is the owner or occupier of private land or public land that is in the authorised area of, or is access land for, the resource authority.

Environmental authority: Environmental authority means an environmental authority issued under s 195 of the *Environmental Protection Act 1994* that approves an environmentally relevant activity (such as a mining lease) applied for in an application.

Evidence: Evidence is the material that proves the facts which are the basis of a party's claim. Evidence will include:

- a) the party's own statement, sworn on oath or affirmation that supports the facts in their compensation statement and attaching any documents that support their case (such as maps and photos);
- b) statements from any witnesses who can support their contentions;
- c) any oral evidence given under oath at the hearing.

Evidence in chief: Evidence in chief is the primary or main evidence that a party wants the Court to consider. For the Court to be able to consider the evidence, the party must convince the Court that it is both relevant and admissible during the hearing.

Exhibit: An exhibit is physical or documentary evidence that has been accepted by the Court as relevant and admissible evidence. Exhibits form a part of the public record for the case.

Expert witness: A person that has a specialised knowledge or skill in a particular field (such as agronomy or land valuation) that gives opinion evidence to the Court based on their specialised knowledge. Usually this is a person with an academic degree in the relevant field, or a long period of experience working in the field. The Court will only allow a person to give expert evidence when it is convinced that the person's knowledge, skill and expertise is of such a nature.

File and serve: To file and serve a document means to give the document to the Court so it can be placed on the Court file and to give a copy of that document (by post, email or personally) to the other parties at their address for service.

Guidelines for Expert Evidence in the Land Court: The Guidelines for Expert Evidence explain the Court's expectations of expert witnesses and its procedures for obtaining, documenting and using their evidence.

Guidelines for the Use of Concurrent Evidence: The Guidelines for the Use of Concurrent Evidence explain how the Court will hear two or more expert witnesses' evidence at the same time.

WORDS AND MEANINGS

Hearing plan: A hearing plan is a brief one to two page document that should set out: the order of witnesses being called, the names of each witness to be called, the time each witness will be called to give evidence, an estimate of time for each witness to give evidence, and an estimate of time required to cross-examine the witness. A hearing plan will also include an estimate of time for the site inspection, opening and closing submissions, and any other matters to be raised at the hearing.

Mines Online Public Inquiry Report: A report provided by MinesOnline as to the area, size, location and other feature of the mining lease.

Owner: the registered owner of freehold land, or a person who holds land from the State under an Act (other than an Act about mining or petroleum) under another kind of lease or occupancy (other than occupation rights under a permit under the *Land Act 1994*) of the land.

Parties: Unless stated otherwise, in this document, “parties” means a party to the case or the party’s lawyer or agent. A party can be a person, company, organisation, government department, or State that has an interest in a case. Usually in compensation matters the parties will be the miner and the landowner.

Pleadings: Pleadings in a case define the issues to be decided in the action. Usually, it is a formal written statement of a party’s claim or defence to another party’s claim in a civil action.

Practice Direction: A procedural direction made by the President of the Court that applies to all cases referred to in the Practice Direction.

Procedural fairness: Acting fairly in decision-making by–

- a) providing a fair opportunity for a party to present their case;
- b) giving impartial consideration to the merits of the case;
- c) acting on logically probative evidence.

Proceeding: The regular and orderly progression of a dispute, including all acts and events between the time of commencement and the judgment.

Queensland Globe (QGlobe): QGlobe is an online interactive tool that presents physical, geographical, and spatial data about a particular location in a map format.

Resource authority: A permit, claim, license, lease or authority may be a resource authority. For a complete list of rights which may be a resource authority, see section 10 of the MERC Act.

WORDS AND MEANINGS

Resource authority holder: A resource authority holder is a person who holds, or has applied for, a resource authority.

Respondent: The legal person responding to an application or an appeal before the court.

Review: A review is a procedural hearing where the President or a Member reviews the progress of the case and makes procedural directions regarding the future management of the case.

Rules of evidence: Rules of evidence are a body of legal principles that govern whether evidence can be admitted during a court proceeding.

Site inspection: A site inspection involves the Court visiting an area of land that is relevant to the case. The Court will conduct a site inspection in accordance with Practice Direction 2 of 2018.

Submissions: Submissions are the arguments put forward (either orally or in writing) by a party in a hearing. They explain why the Court should make an order in a party's favour. They tie the facts to the law.

Surface access: This refers to land that is not being mined but is needed to access the land that is being mined.

Appendix A - Guide to proposal and response

The Land Court does not have *pleadings* which identify the issues in dispute between the parties. The proposal and response filed by the parties will, in some way, be a substitute for pleadings and, therefore, give the opposite party an understanding of what aspects of the agreement will need to be decided.

PROPOSAL

The Court can look at a number of factors when calculating compensation.²³ The proposal by a miner/resource holder, should address each of the factors listed in the relevant Act. It should give the landowner sufficient detail about the mining operation so that the landowner can understand how the activities will affect their use of the land and should include details about–

- a) the timing of the mining operation–
 - i whether the mine will operate all year or only on certain months; and
 - ii when the operation will commence;
- b) what areas within the tenure area will be mined, in what sequence, and what area of disturbance;
- c) how many people will be involved in the operation;
- d) what access is required, and how often will mining equipment/personnel travel the access areas;
- e) what equipment will be used for the operation; and
- f) what measures will be undertaken to prevent or limit damage to properties/watercourses/stock.

²³ *Mineral Resources Act 1989* s 85, 280, 281.

APPENDIX A - GUIDE TO PROPOSAL AND RESPONSE

RESPONSE

Compensation

Landholders and eligible claimants should also look at the factors contained in the legislation when calculating compensation. Some factors to bear in mind are:

- a) a landholder is not entitled to compensation for the value of the resource.
- b) If a landholder is claiming a loss in the capital value of your land, you will need evidence about that.
- c) If a landholder is claiming business losses, they will need evidence about that.
- d) If a landholder is claiming management time, they will need to set out how that management time will be spent and a value for that management time.
- e) Is there any consequential loss.
- f) Accounting, legal or valuation costs necessarily and reasonably incurred to negotiate or prepare the agreement.

Conduct conditions

The Court can make an order including conditions about how the resource authority holder will conduct its activities for a CCA. However, it cannot make orders for conditions in determination of compensation under the MRA.²⁴

²⁴ Nevertheless, the parties can make a private agreement for compensation disputes that does include those conditions.