

SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY

PRACTICE DIRECTION NO. 3 OF 2018

Court Technology

1. This practice direction is made pursuant s 20 of the *Supreme Court Act 1933* and takes effect from 1 January 2019. It applies to all civil and criminal proceedings.

Purpose

2. This direction is to facilitate and guide the use of technology in the resolution of disputes between parties. The Court encourages parties to use technology, where appropriate to further the just resolution of disputes in a quick, inexpensive and efficient manner.

Appearing by audio-visual link

3. Any party seeking leave to appear before the Court by audio-visual link, or for witnesses to give evidence by audio-visual link (excluding a witness giving evidence from a remote witness room arranged by the Court), should notify the other parties of such intention in advance of any application for leave.
4. Prior to making the application, the party should ensure arrangements are in place to use video conferencing facilities that can be contacted by the Court's video conferencing facilities using a SIP address or ISDN number.
5. Individual devices, such as a personal laptop or iPad, and the use of software such as *Skype* and *FaceTime*, do not constitute video conferencing facilities.
6. If a party is unable to access video conferencing facilities, the party must identify to the Court the proposed audio-visual technology to be used at the time of seeking leave to appear by audio-visual link.

Electronic filing

7. Parties may file documents in relation to Supreme Court matters in accordance with Division 6.3.1 of the *Court Procedures Rules 2006 (ACT)*, which will commence on 1 January 2019 following notification of the *Court Procedures Amendment Rules 2018 (No 1)*. All documents filed electronically should be in a format which is text searchable.
8. Where documents are filed in hard copy, the Court may request documents also be provided in a format which will enable text to be searched and copied electronically.

9. The parties may electronically submit draft consent orders and judgments for settling by the Registrar, by email addressed to: SC_Draft_Orders@act.gov.au.

Equipment provided by the Court

10. All courtrooms are equipped with the following technology: HDMI connection for laptop playback, Visualiser (document camera), Blu-ray DVD player, Barco Wireless Presenter, Annotation ability, Wi-Fi, teleconferencing and video conferencing capability, recording provision for two visual channels.
11. All evidence must be readable and accord with the following formats:
 - a. Word processing documents Microsoft Word 97 - 2013 (.doc)
 - b. Imaged Documents / Photos / Exhibits (resolution of at least 200dpi)
 - i. Joint Photographic Experts Group (JPEG);
 - ii. Portable Document Format (PDF); or
 - c. Excel Spreadsheets Microsoft Excel 97 - 2013 (.xls)
 - d. Presentations Microsoft PowerPoint 97- 2013 (.ppt)
 - e. Video/audio formats
 - i. Audio Visual Interleave (.avi)
 - ii. QuickTime Movie file (.mov)
 - iii. MP3 Audio file (.mp3)
 - iv. MP4 Video file (.mp4)

Equipment to be provided by the parties

12. Parties are to provide their own equipment to link into the equipment provided by the Court. Should they require a physical connection to the courtroom equipment, parties are to supply their own cables to link to the HDMI connection.
13. Parties using their own technology, or a third party provider, must:
 - a. Familiarise themselves with the Court systems to avoid delays of hearings due to failure of their equipment; and
 - b. Test their equipment prior to use by arrangement with the Sheriff at least two weeks before a hearing or trial.

Electronic discovery (civil proceedings)

14. Where parties conduct discovery in civil proceedings under rr 315 or 607 of the *Court Procedures Rules 2006*, and documents in excess of 500 pages are likely to be discovered, parties are to give early consideration to formulating a discovery plan incorporating the use of technology and how the cost will be distributed between the parties.

Contents of discovery plan

15. Any discovery plan agreed upon by the parties may typically include:
- The scope of the discovery process being conducted electronically.
 - The search/review process and the use of procedures to remove repeated or duplicate content.
 - A discovery list outlining all metadata as per **Annexure 1**.
 - A format protocol for:
 - (a) producing the lists of documents discovered;
 - (b) exchanging documents (having regard to the importance of preserving original metadata when exchanging electronic documents); and
 - (c) treatment of privileged documents (including any clawback arrangement).
16. A template format protocol is included as **Annexure 1**.

Naming protocols

17. Unless otherwise directed, the naming convention for all documents and attachments should be in accordance with **Annexure 1**.

Discovery conference

18. Where the parties cannot agree to a discovery plan, the Court may order a discovery conference. A discovery conference is a meeting or conference of the parties to consider and attempt to reach agreement on the discovery plan. The Court may direct that a discovery conference be facilitated by the Registrar, Associate Judge, court appointed assessor, expert or other suitably qualified person.

Exchange/inspection

19. Verified lists of discovery may be electronically filed and provided by the discovering party to each other party in electronic format, regardless of whether the discovered documents are held electronically.

20. Where discovered documents have been compiled electronically, the exchange or inspection of documents between parties should be provided in the same format.
21. Where particular hardware, software or other supporting resources are required to access electronically discovered documents, the parties and their lawyers are obliged to ensure all other parties are also able to access any such supporting resources.

Preparing for trial

22. When a matter is set down for hearing, the Court may direct the parties to prepare an electronic court book, upload documents to an electronic court-based platform or engage an external provider to assist in conducting an e-trial.

Court of Appeal

23. The Court of Appeal may direct that any appeal proceedings be conducted electronically. If such a direction is made, the parties are to utilise technology resources in accordance with this practice direction, to the extent applicable on an appeal. However, parties must otherwise continue to comply with the content and timing requirements of Practice Direction No. 1 of 2016 in all matters heard in the Court of Appeal.

Technology assisted trials (e-trials)

24. The following are the basic requirements for the presentation of evidence in any e-trial:
 - a. The ability for the Court, the witnesses and the parties to view one (or multiple) documents at the same time;
 - b. Unique identification of documents, usually consistent with any discovery identification;
 - c. The ability to record which documents have been tendered in evidence;
 - d. The ability for the Court to annotate documents with notes; and
 - e. Efficiency in locating and calling up documents.
25. Where parties are directed to conduct an e-trial:
 - a. The presentation of documentary evidence at trial (e.g. affidavits) must be in a text searchable electronic format.
 - b. Where electronic documents can only be accurately presented in their native format (e.g. a complex spreadsheet), such evidence must also be presented in this way to the Court.

26. If the litigants believe it is necessary for native file formats to be used, it is the responsibility of the parties to ensure the necessary technology is available in the Court to display these files. Any queries in relation to this issue should be directed initially to the Sheriff as soon as possible once a matter is listed for e-trial.

27. Commercially available alternatives are permitted if litigants and the Court consider such solutions to be more suitable having regard to cost effectiveness, satisfaction of the Court's requirements and the needs of the litigants.

Simple e-trials

28. For simple e-trials, involving court books of less than 500 pages including pleadings, affidavits and exhibits:

- c. Parties should prepare an agreed set of documents compiled into one or several PDF files, as convenient, on portable data storage devices and using page numbers as unique identifiers unless otherwise directed.
- d. Submissions may be e-filed with hyperlinked cross-referencing to documentary evidence, cases and transcript where available.
- e. List of authorities may be hyperlinked or electronic copies of authorities may be provided.
- f. Parties may agree to a protocol – an example is at **Annexure 2**.

Complex e-trials

29. Where the litigation involves a large amount of documentary evidence and the trial is anticipated to extend over a period of ten or more sitting days, engagement of a third party provider to operate a coordinated system may be appropriate.

30. Parties should consider the conduct of the proceedings at an early stage and the involvement of any agreed third party provider, to develop a protocol for the conduct of the trial. An example of a protocol for a complex technology assisted trial is at **Annexure 3**.

By direction of the Judges
Annie Glover
Registrar



Date: 22 October 2018

Discovery List Format Protocol

Field	Data type	Notes
Document ID	Text and numbers	This must be a unique identifier. Systems of letters and numbers can be used to organise documents or indicate where they come from e.g. PLA.013.1234 (3 letter party code.3 digit number indicating a location sourced from or a batch processed.4 digit number identifying the particular document) If a document ID label is applied to the document visibly it should appear on the top right hand corner of each page.
Document Date	Date	Suggested format is DD-MMM-YYYY, e.g. 05-Jul-2016. This is to avoid any confusion that may arise from differences in date formats used internationally Documents without discernible dates should be coded as undated. If necessary, incomplete dates can be coded to the first day of the known period e.g. 01-Jan-2015 for year only and 01-Jul-2016 for month only and marked as estimated.
Estimated Date	Yes or no	Where the date entered above is estimated from an incomplete date this field should reflect the fact.
Document type	Text	Documents should be coded from a standard list of document types (e.g. letter, email, prospectus, report, spreadsheet etc.)
Author	Text (optional)	This may be done using one or more of: <ul style="list-style-type: none"> • an email address; • surname and initial • position title
Author Organisation	Text (optional)	This may be done using one or more of: <ul style="list-style-type: none"> • an email address; • surname and initial; or • position title Where there are multiple recipients, these should be listed separated by a semi colon
Addressee Organisation	Text (optional)	
Title used	Text (optional)	Ordinarily this should be apparent from the face of the document
Host document ID	Text and numbers	If the document is an attachment to another document, this field will contain the host document ID.
Document Group	Text/number Coded (optional)	
Privilege	Yes or blank	Indicating whether privilege is claimed
Grounds of Privilege	Text	A concise statement of the grounds
Redacted	Yes or blank	
Basis of Redaction	Text	A concise statement of the basis of redaction e.g. irrelevant, privilege, orders made
Document location	hyperlink	Link to where document is in folder structure

Example of a protocol for a simple technology assisted trial

A. Compilation of electronic document resource

1. The Plaintiff will compile an electronic document resource for the trial (“the Court Book”).
2. The Plaintiff will provide all parties with an initial draft index for the Court Book by [date].
3. Each party will provide the Plaintiff with proposed additions to the draft index by [date].
4. The parties will meet to settle the index on [date], if necessary.
5. The Plaintiff will compile the electronic Court Book in the format of a single text-searchable PDF file containing all documents in the index by [date].
6. Each party will provide documents to the Plaintiff as necessary for compilation of the Court Book in text searchable PDF format, either converted from native format or created from a scanned hard copy made searchable through optical character recognition by [date].
7. The page numbers at which the documents appear within the Court Book will be used as their unique identifier.
8. Once compiled, copies of the PDF file will be made available to all parties and the Court together with an index in the following format:

Pages	Document date	Document description
1-15	1-Jan-2015	Contract of sale between ABC and DLF
16-18	5-Dec-2015	Email from J Smith to H Lin

B. Conduct of Trial

1. Each party will be responsible for bringing the hardware they require to access their copy of the Court Book.
2. The Court will provide the hardware necessary for the judge and witnesses to view the Court Book.
3. Counsel are to call the page number of the Court Book they wish the witness to be taken to and the associate or operator will call up that page for the witness to view.
4. The associate will maintain a list of documents tendered from the online Court Book.
5. Exhibits will be given the number of the page on which the first page of the document appears in the Court Book. The list will be circulated to the parties on a daily basis.

Example of a protocol for a complex technology assisted trial with third party provider

A. Compilation of the electronic document resource

1. The parties engage [provider] to provide [technology assistance services in relation to the trial / the following services...].
2. The provider will create and manage an online resource to contain:
 - a. All documents provided by the parties in accordance with the agreed index;
 - b. Pleadings;
 - c. Documentary evidence;
 - d. Witness statements, affidavits and expert reports;
 - e. Transcript;
 - f. Submissions;
 - g. Authorities; and
 - h. Legislation.
3. The Plaintiff will provide an initial draft index to the other parties by [date] in the format of the attached template [generally a subset of the fields used in discovery].
4. Each other party will provide a list of additional documents to be added to the index by [date].
5. The parties are to settle upon an index on or before [date] and provide the index to the provider by [date].
6. On or before [date] the parties will provide documents to the provider in the following format (by order of preference):
 - a. PDF converted directly from an electronic format;
 - b. Native format where files are not appropriate for PDF conversion; e.g. a spreadsheet;
 - c. Text searchable PDF from a scanned document.
7. The parties will provide documents via [delete any that are inapplicable]:
 - a. CD/DVD;
 - b. USB stick;
 - c. USB hard drive;
 - d. Email;
 - e. SFTP;
 - f. Web browser based file sharing platform.

Document identification

8. Document IDs assigned during the discovery process will be retained for documents included in the online resource. Other documents will be given unique identifiers [in the following format.../in accordance with the attached numbering protocol].

Preparation

9. The provider will upload the first tranche of documents to the online resource on or before [date].
10. All party created documents that refer to other documents in the online resource should include a hyperlink to the relevant document.

Addition of documents

11. Documents can be added to the online resource by email copied to all other parties. The provider will then notify all parties of the document ID for any additional documents in accordance with the convention established above.

Access and private documents

12. Parties are to supply a list of users to have access to the online resource. The Court will provide a list of users to have access. The online resource will be accessible 24 hours a day 7 days a week.
13. Users will be supplied with a login ID and password.
14. A party may provide documents to be included in a private section of the online resource accessible only to that party's users.

B. Conduct of trial

Courtroom setup

15. The provider will install the hardware [in a manner capable of transportation between courtrooms/in the courtroom described in the attached schedule].
16. Parties, the court operator and the Court will have Wi-Fi access in the courtroom.

Calling documents

17. Counsel are to call documents by their document ID, followed by the pinpoint reference to the relevant page. If possible, counsel should provide a list of document IDs to the operator likely to be called that day to assist the process.
18. The provider will provide a 'court operator', who will bring up documents from the online resource as they are called. The court operator may be asked to provide the following views:
 - Enlarging the page;
 - Scrolling down;
 - Highlighting or enlarging a section or paragraph; and
 - Side by side display of multiple pages.

Cross-referencing and hyperlinking

19. Documents will be recorded in the transcript by the document ID and those references will be hyperlinked to the online resource. The online resource will also enable parties and the Court to link from a document to all references to the document in the transcript.

20. The provider will maintain a list of documents shown to a witness or displayed in court with the context in which this was done.

Exhibit management

21. The provider will maintain an exhibit list by tagging documents tendered in the online resource. A cumulative exhibit list will be provided to parties at the end of each day.
22. Tendered documents will not be given a separate exhibit number but will maintain their document ID within the online resource.

Post trial procedure

23. The provider will maintain access to the online resource post trial for the Court to enable the finalisation of any reserved decision.