

Queensland



Subordinate Legislation 2000 No. 166

Land Court Act 2000

LAND COURT RULES 2000

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DICTIONARY

PART 1—PRELIMINARY

Short title

1. These rules may be cited as the *Land Court Rules 2000*.

Commencement

2. These rules commence on 1 July 2000.

Application of rules

3.(1) These rules, other than parts 6 and 9, apply to proceedings in the Land Court and, with necessary changes, to proceedings in the Land Appeal Court.

(2) Part 6¹ applies only to proceedings in the Land Court.

(3) Part 9² applies only to appeals to the Land Appeal Court.

(4) In a provision of these rules, a reference to “**the court**” is a reference to the court mentioned in subrule (1) that is appropriate in the context of the provision.

Application of Uniform Civil Procedure Rules

4.(1) If these rules do not provide for a matter in relation to a proceeding in the court and the *Uniform Civil Procedure Rules 1999* (the “**uniform rules**”) would provide for the matter, the uniform rules apply in relation to the matter with necessary changes.

(2) For subrule (1), an originating application under these rules is to be treated as if it were a claim under the uniform rules.

1 Part 6 (Jurisdiction of judicial registrar)

2 Part 9 (Appeals to the Land Appeal Court)

Definitions

5. The dictionary in the schedule defines particular words used in these rules.

Compliance with rules

6. The court may waive compliance with a rule, or excuse non-compliance with a rule, if the court considers compliance would be likely to cause injustice or unreasonable expense or inconvenience.

PART 2—STARTING PROCEEDINGS**Filing documents**

7.(1) A proceeding is started by filing an originating application with the registrar of the court.

(2) An originating application may be filed by facsimile.

Content of originating application

8.(1) An originating application must comply with any requirements of the Act giving jurisdiction for the proceeding to the court.

(2) Also, an applicant must, in an originating application—

- (a) identify the respondent; and
- (b) briefly state the facts, circumstances or other relevant matters on which the application is based; and
- (c) identify the land, building or watercourse to which the application relates; and
- (d) state—
 - (i) the orders or other relief sought in the proceeding; and
 - (ii) the grounds on which the orders or other relief are sought.

Applicant's contact details and address for service

9.(1) An applicant acting personally must ensure the following details are on the originating application before it is filed—

- (a) the applicant's residential or business address;
- (b) the applicant's telephone number, if any;
- (c) if the applicant does not have a telephone number, a way of contacting the applicant by telephone;
- (d) the applicant's fax number, if any.

(2) A solicitor or agent acting for an applicant must ensure the following details are on the originating application before it is filed—

- (a) the applicant's residential or business address;
- (b) the name of the solicitor or agent and, if the solicitor practises in a firm or the agent conducts or is employed in a business, the name of the firm or business;
- (c) the address of the solicitor's or agent's place of business;
- (d) the solicitor's or agent's telephone number;
- (e) the solicitor's or agent's fax number.

(3) An applicant acting personally and who has an email address may include the email address with the details required under subrule (1).

(4) If an applicant's solicitor or agent, or the solicitor's firm or the agent's business, has an email address, the solicitor or agent may include the email address with the details required under subrule (2).

(5) The "**address for service**" of the applicant is—

- (a) for an applicant acting personally—the address given under subrule (1)(a); and
- (b) for an applicant for whom a solicitor or agent acts—the address given under subrule (2)(c).

Signing originating application

10. The applicant, or the applicant's solicitor or agent, must sign the originating application.

Giving originating application to other parties

11. Unless the court otherwise orders, the applicant must serve a copy of the originating application on each other party.

Documents served on the State

12. A document required to be served on the State must be served on the chief executive of the department administered by the Minister administering the provision giving jurisdiction to the court to hear the proceeding to which the document relates.

Disclosure

13. Chapter 7 of the uniform rules applies, with necessary changes, to the disclosure of documents in relation to a proceeding in the court.

PART 3—ENDING PROCEEDINGS EARLY**Failure to prosecute proceedings**

14.(1) A respondent in a proceeding may apply to the court for an order dismissing the proceeding for want of prosecution if—

- (a) the applicant is required under these rules to take a step in the proceeding, or is required to comply with an order of the court, within a stated time; and
- (b) the applicant does not do what is required within the time stated.

(2) The court may dismiss the proceeding or make another order it considers appropriate on an application under subrule (1).

(3) An order dismissing a proceeding for want of prosecution may be set aside only on appeal or if the parties agree to the setting aside.

(4) Despite subrule (3), the court may vary or set aside an order dismissing a proceeding for want of prosecution made in the absence of the

applicant, on terms the court considers appropriate, and without the need for an appeal.

Discontinuance or withdrawal

15.(1) An applicant may, at any time, discontinue a proceeding or withdraw part of it.

(2) An applicant may discontinue against 1 or more respondents without discontinuing against other respondents.

Notice of discontinuance or withdrawal

16.(1) A discontinuance or withdrawal is effected by filing a notice in the approved form and serving it as soon as practicable on the other parties to the proceeding.

(2) If a party to whom the discontinuance or withdrawal relates consents to the discontinuance or withdrawal, the party must sign the notice before the notice is filed.

(3) If the party's consent is on conditions, the conditions must be stated on the notice.

(4) If the discontinuance or withdrawal is effected within 7 days before the date set for hearing the proceeding, the court may require the parties to explain the reason for the late discontinuance or withdrawal.

Subsequent proceeding

17. A discontinuance or withdrawal under this part is not a defence to another proceeding on the same or substantially the same ground.

Costs

18. If an applicant discontinues or withdraws, the court may order the applicant to pay—

- (a) the costs of the party to whom the discontinuance or withdrawal relates up to the date of the discontinuance or withdrawal, if the party has not consented to the discontinuance or withdrawal; and

- (b) the costs of another party or parties caused by the discontinuance or withdrawal.

PART 4—COURT SUPERVISION

Directions hearing

19.(1) At any time after an originating application for a proceeding is filed—

- (a) any party may apply to the court for a hearing about an order or directions about the proceeding (a “**directions hearing**”); or
- (b) the court may order the parties to attend a directions hearing.

(2) Without limiting subrule (1), a party may apply for, or the court may on its own initiative make or give, 1 or both of the following—

- (a) an order about a preliminary point that may wholly or substantially decide a significant issue in the proceeding;
- (b) an order or direction about the conduct of the proceeding, not provided for in these rules or under an Act, including an order about 1 or more of the following—
 - (i) identifying and separating or making an early decision about the issues in dispute;
 - (ii) filing and serving statements of evidence;³
 - (iii) filing and serving outlines of intended argument;
 - (iv) disclosure by delivery or production of documents or delivery of interrogatories;
 - (v) a court-supervised settlement conference;
 - (vi) a hearing date.

(3) The application must be filed and served on each other party to the proceeding at least 5 business days before the date set for hearing the

³ See rule 23(1) (Expert evidence).

application.

(4) If the application is for an order mentioned in subrule (2)(a), a party wishing to make submissions on the application must file with the registrar and serve on each other party the following documents—

- (a) any affidavit on which the party intends to rely;
- (b) a short outline of the party's intended argument.

(5) The affidavit and outline of argument must be filed and served at least 2 business days before the application is heard.

Effect of application under rule 19

20.(1) An application under rule 19 must be dealt with by the court before the court hears the proceeding.

(2) If the court makes or gives any orders or directions under the rule, the court may decline to set a date for hearing the proceeding until the court is satisfied the parties have complied with the orders or directions.

(3) The parties must comply with the orders or directions before the proceeding is heard, unless the court considers it appropriate, because of the circumstances of the case, to hear the proceeding without the orders or directions being complied with.

Power to correct mistakes

21.(1) This rule applies if—

- (a) there is a clerical mistake in an order or certificate of the court or in a record of an order or certificate of the court; and
- (b) the mistake resulted from an accidental slip or omission.

(2) At any time, the court, on application by a party or on its own initiative, may correct the mistake.

PART 5—EVIDENCE

Way evidence given

22.(1) Unless the court orders that a witness' evidence in a proceeding be given by affidavit or in another way, the evidence may only be given orally.

(2) Giving evidence orally may include merely swearing to the accuracy of a statement of evidence submitted to the court.

(3) If the court orders that evidence be given by affidavit, the court may impose conditions on the order.

Expert evidence

23.(1) A party who intends to call a person to give evidence as an expert witness must serve on each other party a statement—

- (a) giving the name and address of the witness; and
- (b) describing the witness' qualifications to give evidence as an expert; and
- (c) containing the witness' evidence for the hearing.

(2) A party must comply with subrule (1) at least 21 days before the date set for the hearing or, if the court directs a different time, within the time directed by the court.

(3) A party may not, except with the leave of the court or with the consent of each other party, call evidence from a witness as an expert unless the party has complied with subrules (1) and (2).

(4) An expert witness, in examination in chief, must not, except with the leave of the court, expand on matters contained in the witness' statement of evidence or introduce fresh material.

(5) The court may order expert witnesses to confer and prepare and file a document setting out areas of agreement and disagreement and the reasons for any disagreement.

(6) The court may make the order it considers appropriate about the cost of preparing the document.

Subpoenas

24. Chapter 11, part 4 of the uniform rules applies, with necessary changes, to subpoenas in relation to proceedings in the court.

PART 6—JURISDICTION OF JUDICIAL REGISTRAR

Definitions for pt 6

25. In this part—

“relevant matter” means a matter a judicial registrar may hear and decide under rule 26.

“the court” means the Land Court.

Judicial registrar’s power to hear and decide matters

26. A judicial registrar may constitute the court to hear and decide the following matters—

- (a) the jurisdiction of the court to hear and decide a matter;
- (b) an application for disclosure;
- (c) an application for an order to answer interrogatories;
- (d) a matter in relation to which the parties ask that an order be made by consent;
- (e) any other matter directed by the president, in writing, other than a contested application that may result in judgment or other final relief.

Judicial registrar’s power to make orders

27. A judicial registrar, when constituting the court or otherwise exercising a judicial or quasi-judicial power, has power to make the following orders—

- (a) an order that a party disclose documents to another party;

- (b) an order that a party answer interrogatories;
- (c) an order that proceedings be heard together;
- (d) an order that a party file any document that, in the judicial registrar's opinion, will help resolve the matters in dispute between the parties;
- (e) an order that a party produce stated documents to the court;
- (f) an order that the evidence of a witness be allowed to be taken on an examination before the hearing of the proceeding;
- (g) an order that a party give further particulars of a claim, reply or cross-claim;
- (h) an order about the amendment of a document;
- (i) an order to assist in the expedition of proceedings;
- (j) an order in accordance with a draft consent order;
- (k) an order necessary because of the failure of a person to comply with an order mentioned in paragraphs (a) to (j);
- (l) an order for substituted service;
- (m) an order granting an extension of time for filing an application in the court, unless the Act giving jurisdiction to the court for the proceeding does not allow an extension of time;
- (n) any other order directed by the president in writing other than a judgment or order for other final relief.

Matter must not be heard by judicial registrar

28. The court, as constituted by a member, may order or direct that an application about a relevant matter in a particular proceeding can not be heard by the court as constituted by a judicial registrar.

Example—

The court may order or direct that an application about a relevant matter in a proceeding can not be heard by the court as constituted by a judicial registrar because the court, as constituted by a particular member, is managing the entire proceeding.

Application about relevant matter must not be made to court

29. If a judicial registrar is available, a person may make an application about a relevant matter to the court as constituted by a member only if the court gives leave.

Referral of application about relevant matter

30.(1) If a judicial registrar considers it would be appropriate for an application about a relevant matter to be decided by the court as constituted by a member, the judicial registrar must refer the application to the court as constituted by a member.

(2) A judicial registrar must also refer an application about a relevant matter to the court as constituted by a member if, before the hearing starts—

- (a) a party asks the judicial registrar to refer the application; and
- (b) the judicial registrar considers it is in the interests of justice to refer it.

(3) On a reference, the court, as constituted by a member, may also give a direction about the conduct of the hearing.

Removal of application about relevant matter

31. The court as constituted by a member may, before the end of a hearing of an application about a relevant matter before the court as constituted by a judicial registrar, order that the application or a part of it be removed to the court as constituted by a member.

Involvement of court as constituted by a member

32.(1) This rule applies if there is—

- (a) a reference of an application about a relevant matter under rule 30(1) or (2); or
- (b) a removal of an application about a relevant matter under rule 31.

(2) The court as constituted by a member may—

- (a) hear and decide the application or remit the application to the court as constituted by a judicial registrar with the directions the court

considers appropriate; or

- (b) decide a matter arising under the application or remit the matter to the court as constituted by a judicial registrar with the directions the court considers appropriate.

PART 7—HEARING PROCEEDINGS

Setting down for trial

33. The registrar must give the parties written notice of the date and place for trial of a proceeding.

Request for trial date

34.(1) A party who is ready for trial may prepare and sign a request for trial date in the approved form.

(2) The party who prepared the request must serve copies of it on each other party and, if a party served is ready for trial, the party must sign the request and return it to the party who prepared it.

(3) The party who prepared the request must file, as soon as practicable, a copy or copies of the request signed by all parties.

(4) For this rule, a party is “**ready for trial**” if, as far as the party is concerned—

- (a) all reasonable steps have been taken to separate and resolve the issues and settle the proceeding; and
- (b) the proceeding is, in all respects, ready for trial; and
- (c) no objection will be taken by any party to the admission of any material in a witness’ statement of evidence under rule 23(1).⁴

⁴ Rule 23(1) (Expert evidence)

Request for decision without oral hearing

35.(1) A party making an application may, with the written consent of the other parties to the proceeding, ask the court to decide the application without an oral hearing.

(2) If an applicant asks that an application be decided without an oral hearing, the application must be accompanied by an outline of argument and details of the evidence proposed to be submitted.

Court may decide application without oral hearing

36. The court may decide an application made under rule 35 without an oral hearing and make or give orders or directions about the conduct of the proceeding.

Court may decide that decision without oral hearing is inappropriate

37. If, at any time, the court decides an application is inappropriate for decision without an oral hearing, the court—

- (a) must, as soon as practicable, notify the parties of the decision by telephone or in some other way; and
- (b) may set a date for hearing the application.

Further information

38.(1) The court deciding an application without an oral hearing may obtain further information, including evidence, about the proceeding by telephone, facsimile, email or in another way.

(2) If the court decides to obtain further information, the court—

- (a) must inform all parties of the substance of the inquiry; and
- (b) give all parties an opportunity to be heard.

Order if decision without oral hearing

39. If, in deciding an application without an oral hearing, the court makes

an order, the registrar must send each party a copy of the order by post, facsimile or email together with a copy of the court's reasons.

PART 8—ORDERS

Judgment

40. Final relief in a proceeding is granted by giving a judgment setting out the entitlement of a party to payment of money or another form of final relief.

Order

41.(1) An order of the court is made by—

- (a) the order being pronounced in court by the member or judicial registrar making the order; or
- (b) the order being set out in a document, with or without reasons, and signed by the person making the order.

(2) An order takes effect on the day on which it is made.

(3) However, the court may order that an order takes effect from an earlier or later date.

Reasons for order

42.(1) The court's reasons for making an order may, if in written form, be published—

- (a) by the reasons being delivered in court to the registrar or a deputy registrar to give a copy to each party; or
- (b) by a copy of the reasons, signed by the member or judicial registrar making the order, being given to the registrar or a deputy registrar to—
 - (i) deliver in court; and

- (ii) give or send a copy to each party; or
- (c) for a proceeding in which a decision is made without an oral hearing—by a copy of the reasons, signed by the member or judicial registrar making the order, being sent to each party.⁵

(2) The court’s reasons for a proposed order may be published before the order is made.

Delivery of reserved decision by a different member or judicial registrar

43.(1) If a member reserves a decision in a proceeding, the member may—

- (a) arrange for written reasons for decision to be prepared setting out the proposed order; and
- (b) sign the reasons for decision and send them to another member for delivery.

(2) The other member must, at a convenient time, publish in court the reasons for decision.

(3) The publication by the other member has the same effect as if, at the time of publication, the member who reserved the decision had been present in court and made the order proposed in the written reasons, and published the reasons, in person.

(4) In this rule—

“**member**” includes judicial registrar.

Consent orders

44.(1) The court may give judgment, or make another order, by consent if—

- (a) the parties consent in writing; and
- (b) the court considers it appropriate.

(2) The consents must be filed in the registry.

⁵ See rule 39 (Order if decision without oral hearing).

- (3) The judgment or order must—
- (a) state that it is given or made by consent; and
 - (b) be filed in the registry.

Setting aside an order

45.(1) The court may vary or set aside an order before the earlier of the following—

- (a) the filing of the order; or
 - (b) the end of 7 days after the making of the order.
- (2) However, the court may set aside an order at any time if—
- (a) the order was made in the absence of a party; or
 - (b) the order was obtained by fraud; or
 - (c) the order does not reflect the court's intention at the time the order was made; or
 - (d) the party who has the benefit of the order consents.

PART 9—APPEALS TO THE LAND APPEAL COURT

Application of pt 9

46. This part applies to an appeal to the Land Appeal Court.

Parties to an appeal

47.(1) Each party to a proceeding who is directly affected by the relief sought in the notice of appeal or who is interested in maintaining the decision under appeal must be made a respondent to the appeal.

(2) The notice of appeal need not be served on a party who is not made a respondent to the appeal.

Inclusion, removal or substitution of party

48.(1) The court may order—

- (a) the inclusion or removal of a person, whether or not a party to the original proceeding, as a party to an appeal from the decision in the original proceeding; and
- (b) the inclusion or substitution of a person directly affected by the appeal as a party to the appeal.

(2) However, a person who has not consented in writing may not be made an appellant.

(3) If the court orders the inclusion of a person as a party to an appeal, it may adjourn the hearing of the appeal and make an order or give a direction it considers appropriate about the conduct of the appeal.

Service of written submissions

49.(1) At least 14 days before the date set for hearing an appeal (the “**hearing date**”), the appellant must file and serve on all respondents to the appeal an outline of submissions stating in a precise but comprehensive way—

- (a) each ground of appeal intended to be relied on by the appellant; and
- (b) the argument intended to be relied on in support of each ground; and
- (c) any authorities intended to be relied on in support of each ground; and
- (d) the facts, identified by reference to stated parts of the court record, intended to be relied on in support of each ground; and
- (e) the grounds of appeal stated in the notice of appeal but not intended to be relied on by the appellant.

(2) Any reply by a respondent must be filed and served on the appellant at least 7 days before the hearing date and must include an outline of submissions stating in a precise but comprehensive way—

- (a) the arguments intended to be relied on by the respondent; and

- (b) any authorities intended to be relied on in support of each argument; and
- (c) the facts, identified by reference to stated parts of the court record, intended to be relied on in support of each argument; and
- (d) the assertions or propositions of fact or law in the appellant's outline of submissions that the respondent admits or does not dispute.

(3) At least 3 business days before the hearing date, each party must file and serve on the other parties a list of cases to which the party intends to refer in argument at the hearing.

PART 10—MISCELLANEOUS

Opening hours of registry

50. The registrar must keep the registry open between 9 am and 5 pm on business days.

Approved forms

51.(1) The president may approve forms for use under these rules.

(2) If the president has approved a form (the “**approved form**”) for a purpose, the approved form must be used for the purpose.

Court dress

52. A member or judicial registrar constituting the court or a lawyer appearing before the court must not robe.

SCHEDULE

DICTIONARY

rule 5

“address for service” see rule 9(5).

“application” means—

- (a) an originating application; and
- (b) an application about a proceeding made after the proceeding is started and before it is decided.

“approved form” see rule 51.

“order” includes a judgment, direction, decision or determination of the court whether final or otherwise.

“originating application” means an application starting a proceeding.

“relevant matter”, for part 6, see rule 25.

“the court”—

- (a) for part 6—see rule 25; and
- (b) for part 9—means the Land Appeal Court; and
- (c) otherwise—see rule 3.

“uniform rules” see rule 4.

“without an oral hearing”—

A matter is decided “without an oral hearing” if it is decided on written material and submissions without the parties attending.

ENDNOTES

1. Made by the Governor in Council on 29 June 2000.
2. Notified in the gazette on 30 June 2000.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Natural Resources.