

DISCOVERY AND PROOF OF COMPUTER-BASED EVIDENCE IN CIVIL TRIALS IN QUEENSLAND¹

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Discovery: obligation and process

Pursuant to the *Uniform Civil Procedure Rules 1999* (Qld) (UCPR),³ a party to a civil proceeding in a Queensland court is obliged to disclose to each other party each document in the party's possession or control that is directly relevant to an allegation in issue in the pleadings. This process is performed after the exchange of pleadings.⁴ As part of the process each party is required to complete the prescribed Form 19⁵ and the list should contain descriptions of the documentation to be disclosed. Upon receipt and consideration of the list, the other side/s will then nominate what they require. Documents may be disclosed either by delivering copies or by production:⁶

- inspection – by having the material available for inspection at an agreed time and venue if it is inconvenient for the disclosing party to deliver the documents to the other side due to its size, volume, or quantity;⁷ or
- production – by providing the material and any necessary mechanical or computer devices for inspection and duplication by the other side.⁸

Parties are obliged to comply with the duty until the proceeding concludes⁹ and so will need to repeat the process for any new material that may surface before then.

If there is a real possibility that a person might destroy documents or other evidence, a plaintiff may apply to the court without notice to the other person for a search order.¹⁰ Such an order may direct the person to permit premises to be entered and searched and things to be seized.¹¹

The UCPR do not refer specifically to electronic documents. Under the *Acts Interpretation Act 1954* (Qld) “document” includes:

- (a) any paper or other material on which there is writing; and

¹ Paper delivered as part of the Queensland/Chinese courts seminar, May 2009. This has been amended to reflect recent changes to the Federal Court Practice Directions.

² Judge of the Supreme Court of Queensland. The author acknowledges the invaluable assistance of his Associate, Ms Jill H-Y Chang Chien in the preparation of this paper.

³ Available at <http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/S/SuprCrTUCPRu99.pdf>.

⁴ *Uniform Civil Procedure Rules 1999* (Qld), rule 214.

⁵ <http://www.courts.qld.gov.au/PracticeDirections/Supreme/UCPR-f-19V2-070614.doc>

⁶ *Uniform Civil Procedure Rules 1999* (Qld), rule 210.

⁷ *Uniform Civil Procedure Rules 1999* (Qld), rule 216.

⁸ *Uniform Civil Procedure Rules 1999* (Qld), rule 217.

⁹ *Uniform Civil Procedure Rules 1999* (Qld), rule 211 (2).

¹⁰ *Uniform Civil Procedure Rules 1999* (Qld), rule 261A.

¹¹ *Uniform Civil Procedure Rules 1999* (Qld), rule 261D.

- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; and
- (c) any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being produced or reproduced (with or without the aid of another article or device).¹²

Therefore, electronically stored material such as emails, spreadsheets and audio recordings stored on a computer device are documents under sub-section (c) and are governed by the disclosure rules in the UCPR.

Although the Rules do not distinguish between paper and electronic material, it is possible for parties to disclose such material either by converting the electronic files into a tangible object, such as printing out emails or spreadsheets. This is probably the normal practice for most firms for various reasons (for example the availability of or access to technology, habitual work procedures or simply one's confidence in working with electronic resources). But it has been pointed out to be a waste of time and money.¹³

It is also worth noting that the UCPR do not limit the means by which material can be exchanged and so would potentially allow parties to exchange information through the use of computer equipment (for example by copying the files to compact discs or portable disk drives).¹⁴ In circumstances where a large volume of material is involved, consideration should be given to the Supreme Court of Queensland Practice Direction No. 8 of 2004¹⁵ (Appendix 1). It facilitates the use of a "document management protocol" that is designed to streamline the process of disclosure and discovery by creating a standardised categorisation of relevant documents. Confusion can be created by a lack of consistent approach; for example if each side adopts a slightly different term for the same type of document: "fax" and "facsimile".

Other guidelines are also available to assist parties in developing a protocol suitable for their particular matter. A sample protocol can be found in the Supreme Court of Queensland Practice Direction No. 8B of 2004¹⁶ (Appendix 2). Appendix 3 is the Supreme Court of Queensland Practice Direction No. 8C of 2004,¹⁷ a guideline how on to complete Form 19.

A similar obligation exists for parties in proceedings in the Federal Court of Australia. Formal procedures regarding disclosure and discovery can be found under Order 15 of the *Federal Court Rules*. Unless ordered otherwise by a Judge, parties are obliged to give discovery.¹⁸ Again, the term "documents" would also consist of "any other material data or information stored or recorded by mechanical or electronic means".¹⁹

On 25 September 2009 the Federal Court of Australia Practice Note CM6²⁰ was released by Chief Justice Black of the Federal Court of Australia. It relates to "the use of technology in the management of documents and conduct of the proceeding" (see Appendix 4). Supplementary material, including a sample protocol and checklists, has also been released to assist practitioners. These complement the existing disclosure obligations mentioned

¹² [Acts Interpretation Act 1954](#) (Qld), s 36.

¹³ Federal Court of Australia Practice Note CM6 (September 2009), at paragraph 5.

¹⁴ See for example *Uniform Civil Procedure Rules 1999* (Qld), sub-rules 217 (3) and (5).

¹⁵ <http://www.courts.qld.gov.au/PracticeDirections/Supreme/SC-PD-8of2004.pdf>

¹⁶ <http://www.courts.qld.gov.au/PracticeDirections/Supreme/SC-PD-8Bof2004.pdf>

¹⁷ <http://www.courts.qld.gov.au/PracticeDirections/Supreme/SC-PD-8Cof2004.pdf>

¹⁸ *Federal Court Rules*, Order 15 Rule 2.

¹⁹ *Federal Court Rules*, Order 1 Rule 4.

²⁰ http://www.fedcourt.gov.au/how/practice_notes_cm6.html

previously. It should be noted that the application of the Practice Note is at the Federal Court's discretion, allowing for some flexibility.

The default document management protocol provided by the Court is to be used in matters involving 200 to 5000 discoverable electronic documents.²¹ Parties in a more complicated matter (with 5000 or more discoverable documents) may wish to devise their own protocol with reference to the Advanced Document Management Protocol.²² Once the protocol is in place, each party must conduct disclosure and discovery accordingly. A pre-trial checklist²³ has also been provided for matters that actually proceed to trial. The effectiveness of these new practices remains to be assessed.

Arguments for and against e-discovery

The advantages of performing discovery electronically may include, and not limited to: preventing excessive photocopying and wastage of time and other resources; allowing easier access for everyone involved by minimising logistical difficulties; and reducing litigation costs in general. On the other hand, possible disadvantages may include: arguments of invading personal privacy (for example, exposing internal communication between employees through the course of litigation); and difficulties associated with the storage and backing up of data (costs for prolonged preservation/retention of material).

Proof of computer-based documents

In civil trials it is often necessary to prove the truth of the contents a document. In Queensland as in all common-law countries, the basic rule of proof requires a witness to testify, either orally or in writing, that what is stated in the document is true. Many years ago Parliament created statutory exceptions to the hearsay rule to make it easier to prove the contents of documents. Those exceptions deal with books of account²⁴ (which are widely defined) and in some circumstances, statements on any subject in documents.²⁵ These exceptions apply to computer-based documents in the same way that they apply to paper documents. That result has been achieved by defining "document" in the *Evidence Act* to include any disk, tape, sound track or other device in which sounds or other data are embodied.²⁶

Special provision has also been made for the admission into evidence of statements contained in a document produced by a computer.²⁷ All the following conditions have to be satisfied before this can be achieved:

- the document must have been produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by any person; and
- information of the kind contained in the statement must have been regularly supplied to the computer over that period; and

²¹ http://www.fedcourt.gov.au/how/practice_notes_cm6_defaultDMP.html

²² http://www.fedcourt.gov.au/how/practice_notes_cm6_advancedDMP.html

²³ http://www.fedcourt.gov.au/how/practice_notes_cm6_pre_trial_checklist.html

²⁴ *Evidence Act 1977* (Qld), ss 83 – 91.

²⁵ *Evidence Act 1977* (Qld), s 92.

²⁶ *Evidence Act 1977* (Qld), schedule 3.

²⁷ *Evidence Act 1977* (Qld), s 95.

- computer must have been operating properly throughout the relevant part of the period or if not, must have had no problem which would have affected the accuracy of the document; and
- the information contained in the statement must reproduce or be derived from information supplied to the computer in the ordinary course of its activities.²⁸

Where multiple computers were used to store information, they can be treated as one computer for the purposes of this section.²⁹

In practice there is very seldom any dispute about proving the contents of a computer. Occasionally there may be a dispute about the authenticity or date of a document on a computer. In such cases the computer and the disk or hard drive containing the document may be subjected to detailed analysis by a forensic computer specialist. Evidence may be given of a document's meta-data or of documents which have been deleted but not properly wiped from the disk. If the computer in question was on a network, deleted documents may be found in backup copies made by the network server.

Future trends

Not only civil matters, but also criminal too, would benefit with increased use of technology. Electronic trials seem to be another closely associated concept that is likely to gain momentum in the near future. This was excellently illustrated by a recent criminal trial in the Supreme Court of Queensland for conspiracy charges relating to tax evasion. Much time and costs were saved as the evidence was readily available for viewing by clicking a few buttons. The jury was also spared from having to carry voluminous bundles of paper to and from the court room. A similar trial may also take place in the Supreme Court of Queensland later in the year. It is foreseeable that in the near future, the use of computer technology would greatly assist matters in both the civil and criminal jurisdictions.

²⁸ *Evidence Act 1977 (Qld)*, s 95 (2).

²⁹ *Evidence Act 1977 (Qld)*, s 95 (3).

APPENDIX 1

PRACTICE DIRECTION NUMBER 8 OF 2004

SUPREME COURT OF QUEENSLAND

Electronic management of documents

Introduction

The Court aims to streamline the management of disclosed documents.

It does this by:

- encouraging the adoption of document protocols from the institution of proceedings;
- encouraging the use of information technology to manage documents for disclosure, for interlocutory and directions hearings, and at trial.

Why do we need document protocols?

Document protocols are designed to ensure parties classify documents consistently.

Protocols are of benefit in both paper based and electronic trials because they require predictable, consistent terminology to describe evidence. This avoids the problem of multiple descriptions of the same concept (eg fax, facsimile, fax cover sheet or facsimile transmission report).

Consistent use of agreed classification fields from the earliest possible stage should minimize the cost of managing both hard copy and electronic documents in both small and large cases.

How is a document protocol established?

- Form 19 (as amended) effectively provides a “default” protocol for use in all cases.
- To the extent that Form 19 does not provide enough descriptive guidance, eg. where there are a large number of documents to be disclosed, the parties are encouraged to agree upon a more detailed protocol between themselves.
- The parties may seek a consent order from the Court in relation to an agreed protocol.
- Either party may seek directions from the Court in relation to the establishment of a protocol; however, before seeking a direction, the parties should make all reasonable efforts to reach agreement.

At what stage in proceedings should a protocol be established?

Parties should seek to agree a protocol for describing and exchanging documents as soon as possible after proceedings have been instituted and in any case before disclosure is commenced.

Content of a document protocol (See Appendix)

Who classifies documents for the purpose of a protocol?

The descriptive fields contained in a protocol are referred to as “objective” fields because you do not need legal training to apply them to a document. They do not require an awareness of the facts of the case, the issues in dispute or an understanding of legal process.

Objective fields can be determined by a non-legally trained person, merely by reading the document.

Electronic trials

Parties should consider the use of technology if it is likely that the number of documents to be disclosed will exceed 500.

If parties have disclosed documents by electronic reference in accordance with a document protocol, they should consider making submissions to the court regarding the use of technology at the hearing including submissions about:

- (a) hardware, software and other infrastructure,
- (b) supporting courtroom technology support or imaging services,
- (c) cost allocation arrangements between the parties, the court and any third party service providers.

Subject to competing demands and within limited budgetary constraints, the Court will endeavour to provide resources to assist with the conduct of a trial using electronic document management. These resources may change on a case by case basis depending upon availability and other criteria, however as a guideline, the following may be available:

- file server and operating system software
- dedicated, permanent internet connectivity
- routers, firewalls, network switches and virus protection software
- disk capacity (this may fluctuate considerably depending on availability)
- network cabling
- flat screen or traditional monitors
- desktop computers running recent versions of Microsoft desktop applications
- evidence display facilities, and
- real time transcribing services

The parties will need to provide:

- any required equipment which cannot be provided by the court, and
- courtroom technology support services or imaging services.

The parties should try to agree as to how services of this nature are to be provided to support an electronic trial. The court may also provide assistance with this in suitable cases. Further information is available from the courts' web site (www.courts.qld.gov.au).

Group email

Trial preparation may be facilitated by group email, with the List Manager (CivilListManager@justice.qld.gov.au) and possibly the Trial Judge's Associate as participants.

Samples of protocols used may be viewed on the Courts' website.

(Paul de Jersey)
Chief Justice
13 July 2004

Appendix

Contents of a document protocol

In conjunction with this published protocol, the Rules Committee has altered Form 19 of the Uniform Civil Procedure Rules.

The Form 19 changes establish a “default” document protocol which will automatically apply to both electronic and paper based cases, unless a more detailed protocol has been agreed by the parties, or imposed by the court, to suit the particular needs of a case.

For example, in cases involving large volumes of documents, or where an electronic trial is proposed, the classifications contained in Form 19 may not provide the descriptive framework necessary to support the effective exchange and management of documents.

A protocol adapted to the needs of a particular case should:

- list the fields to be used to describe each disclosed document in addition to those fields required under Form 19 (some sample fields are mentioned in the table below);
- focus particularly on the Document ID and Document Type fields (refer table below) ;
- where documents are to be imaged, identify the resolution, compression type and format to be used, whether images are to be reduced to A4 size (if the original is larger), whether they are to be prepared in colour or black and white (eg for colour photographs);
(the courts recommend single page TIFF files using a resolution between 150 and 300 dpi and CCIT G4 Compression and that a corresponding multi page PDF file should be used for every document)
- identify how image files and directories are to be named and structured;
- indicate how disclosure lists and images (if any) are to be exchanged or offered for inspection (eg hard copy, CDROM, disk, email, images, photocopies etc);
- identify the format or structure for the exchange of lists and images if they are to be produced: eg., hard copy, word processing format, spreadsheet format, pre defined database structure designed for import to a litigation support package, ASCII delimited etc;
- identify any other issues associated with the use of technology at the trial.

The Court may also require that the parties provide data to the Court in a particular structure for the purposes of an electronic trial.

Descriptive Fields

The table below is based on the position implemented in other jurisdictions. It contains descriptive fields which could be used over and above those required under Form 19.

Fields may be selected from this table to suit the needs of any particular case. The agreed list of fields forms part of the “Document Protocol”.

Field	Data type and length of field	Notes
Document ID	Text (could be up to 16 characters long)	Each document should be uniquely identified preferably using the following methodology. AAA.xxx.yyy.zzzz where: AAA represents the party from whom the document was sourced xxx refers to an archive box number (optional) yyy refers to the folder number, and

Field	Data type and length of field	Notes
		<p>zzz refers to the page numbers within the folder (blank filled to make 4 or 5 characters depending on the needs of the case eg. page 37 could be 0037 or 00037)</p> <p>Pages inserted at a later date may receive a suffix, eg., if two consecutive pages are numbered XXX.001.001.0002 and XXX.001.001.0003, a newly inserted page between the two would be numbered XXX.001.001.0002_A.</p> <p>Each page should be numbered if possible, in the bottom right-hand corner without obscuring text. If this is not possible an additional field could be used to record the number of pages in a document.</p> <p>Attachments to documents should be separately numbered, usually sequentially following the host document. For example, a host document numbered XXX.001.001.0001 would have attachments numbered XXX.001.001.0002, XXX.001.001.0003 and XXX.001.001.0004.</p> <p>Some image file names may be restricted to a maximum of 8 characters. This may affect the Document ID structure if documents are to be imaged and image files are to be named identically to the Document ID.</p>
Attachments	Number	Number of attachments to the document.
Host Document Number	Text	Contains Document ID of the host document. This is held only for attachment documents.
Document Group	Text, 3	<p>HWA: Host with attachment HNA: Host no attachment ATT: Attachment</p>
Date	Date, 10, or Text, 25 (to be agreed).	<p>Date structure should be:- DD/MM/YYYY eg. 05/03/2002</p> <p>If a date range is to be used (eg., for a bundle of document), two date fields may be used, eg. "Date From" and "Date To", or "various".</p> <p>If there is no way of ascertaining the document date, the parties may agree upon a convention, eg., "Undated", or 00/00/0000, however, some databases may not recognize these codes.</p> <p>Documents with only a month and year should be entered as first day of the month and an entry should be made in the next Estimated Date field.</p> <p>Documents with the day and month but no year should be</p>

Field	Data type and length of field	Notes
Estimated Date	Text, 3. (Yes or No)	considered undated. This will be blank if the exact date is clear from the face of the document. It will be “Yes” if the actual date is not apparent from a face reading.
Document Type	Text, 254.	Parties should agree a list of document types prior to disclosure (eg.: letter, memorandum, file note..).
Document Title Privilege	Text, 254 or as appropriate Text, 6.	Title of document, eg. “report on technology”. This identifies whether a claim of privilege is made over the document. The permissible entries in this field are "Yes", "No", and "Part". If this field is completed with "Yes", or "Part", the following “basis of privilege” field must also be completed.
Privilege Basis	Text, 50 (or combination of text and numbers).	Privilege category.
Status	Text, 10.	“Copy” or “Original”.
Author	Text, 254 or as appropriate.	Person or persons who wrote the document based on a face reading of the document: last name, first initial only, eg. “Smith B”. It is important to ensure names are not recorded in different ways, eg., “Smith, A” may be Anthony Smith or Tony Smith - this person should not be recorded as “Smith, T”.
Author Organization	Text, 254 or as appropriate.	Organization sending the document based on a face reading of the document. Parties should agree spelling or abbreviations for common organizations, eg. ABC Pty Ltd.
Addressee	Text, 254 or as appropriate.	Person/s to whom the document is addressed or copied based on a face reading of the document. Usually this is in the format, last name first initial, eg. “Smith B”. Where a field contains multiple entries, eg, many recipient persons or organizations, authors or parties, a “separator” character should be agreed between the parties. It is generally recommended that “/” be used, rather than a comma “,”.
Addressee Organization	Text, 254 or as appropriate.	Organization/s receiving the document. Parties should agree on spelling or abbreviations for common organizations. Where a field contains multiple entries, eg, many recipient persons or organizations, authors or parties, a “separator” character should be agreed between the parties. It is generally recommended that “/” be used, rather than a

Field	Data type and length of field	Notes
Parties	Text, 254 or as appropriate.	comma ”,”. The parties to an agreement or other legal document (not correspondence).
Source	Text, 20 or as appropriate.	The party from whom documents were obtained (where documents are obtained from someone other than the party making discovery eg. through a subpoena).
Non-Paper Record	Text, 3.	This field is “Yes” if the evidence is not a document, e.g. video or audio tapes, floppy disks, computer tapes and other objects.

APPENDIX 2

[Sample]

Document Protocol

For the Supreme Court case of

[CASE NAME AND COURT FILE NUMBER GOES HERE]

This document has been prepared following a document protocols meeting involving legal representatives from all parties in the above case in order to streamline their disclosure and to ensure that disclosed documents are processed and described consistently.

It is estimated that there will be **[insert number]** lever arch folders of documents involved however not all of these will necessarily be included in the agreed bundle.

1 Document Fields

1.1 In accordance with Form 19, the following fields of information must be provided for every disclosed document:

- Doc ID
- Document Type
- Title**¹
- Author
- Author Organisation
- Recipient
- Recipient Organisation
- Date

1.2 Parties have also agreed to exchange the following additional fields²:

- Host Doc ID
- End Page
- Document Group (Host, Attachment, Unattached)
- Status (Copy or Original)
- Parties (i.e. to an Agreement)
- Cc's
- Estimated date
- Privilege
- Privilege basis
- Attachments
- Source
- Non-Paper Record

¹ **Optional

² Modify as appropriate

2 Document Types

Accounting Record	Email	Photograph
Agenda	Extract	Plan
Agreement (<i>used also for contracts and deeds</i>)	Facsimile	Policy
Annual Return	Fax Confirmation	Presentation
Article	File Cover / Divider	Receipt
Bank statement	File Note	Report
Brochure (<i>including media/advertising material</i>)	Financial Report	Schedule
Business Card	Form	Specification
Certificate	Graph	Spreadsheet
Chart	Guidelines	Table
Cheque	Handwritten Note	Tender
Company Records	Invoice	Video
Computer Disk / CD Rom	Letter	With Compliments Slip
Computer Printout	List (<i>also used for file indexes</i>)	
Court Document	Memorandum	
Diary / Notebook	Minutes (<i>informal and formal</i>)	
Drawing (<i>used also for diagrams, designs, sketches</i>)	Note	

3 Document ID Format

- 3.1 The Document ID (Doc ID) is a unique identifier for each document.
- 3.2 Pages are to be consecutively numbered in the bottom right-hand corner of each page without obscuring any text.
- 3.3 Attachments and enclosures are to be treated as documents in their own right, described and listed separately.

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- 3.4 The Document ID will include the source of the document, the folder number and the number appearing on the first page of each document. For example:

ABC.001.0001 (a 6 page document)

ABC.001.0007 (the first page of the next document)

ABC is the alphabetic shorthand for the party name from whom the document was sourced;
001 Folder number 1;
0001 Page of the document.

- 3.5 If a page has been inadvertently missed after the labelling process or an additional page(s) has been added, it will be given a page number, an underscore and a minimum two digit suffix number. For example, if you need to insert a page between ABC.004.0037 and ABC.004.0038, it will be called ABC.004.0037_01. If you need to insert two pages in that position the second page will be called ABC.004.0037_02.

4 Image and Exchange Format, Names and Directory Structure

- 4.1 Parties agree that documents are to be imaged as follows except as otherwise provided for below:

- (i) Single page TIFF– Compression Group 4 300 dpi, A4 black and white or PDF.
- (ii) Colour photographs, diagrams, plans and drawings are to be imaged as black and white tiff images. Originals will be called upon if required.
- (iii) Images may be named identically to the relevant Document ID or according to the agreed folder structure. If images are named in accordance with the naming convention of the full Document ID then the dots within the Document ID may be omitted (other than the dot preceding the file extension).
- (iv) [add others as agreed].

Parties have agreed to exchange images and data in accordance with the selections from the following checklist:

Court Documents and Witness Statements					
Format:		If Electronic Document Format:		To Be Delivered By:	
Hard copy	<input type="checkbox"/>	ASCII text file	<input type="checkbox"/>	Hand Delivery	<input type="checkbox"/>
Electronic copy	<input type="checkbox"/>	Word Processed Document	<input type="checkbox"/>	Australia Post	<input type="checkbox"/>
		XML	<input type="checkbox"/>	DX	<input type="checkbox"/>
		RTF	<input type="checkbox"/>		
		HTML	<input type="checkbox"/>		
		Other (to be specified)	<input type="checkbox"/>		

Disclosure		
Exchange of Disclosure Lists:	Electronic List Disclosure Format:	To Be Delivered By:
Hard copy <input type="checkbox"/>	Delimited ASCII text file <input type="checkbox"/>	Hand Delivery <input type="checkbox"/>
Electronic copy <input type="checkbox"/>	Word Processed Format <input type="checkbox"/>	Australia Post <input type="checkbox"/>
	Spreadsheet <input type="checkbox"/>	DX <input type="checkbox"/>
	XML <input type="checkbox"/>	
	RTF <input type="checkbox"/>	
	HTML <input type="checkbox"/>	
	Floppy Disk <input type="checkbox"/>	
	Electronic Mail <input type="checkbox"/>	
	CD Rom <input type="checkbox"/>	
	Internet <input type="checkbox"/>	
	Other (to be specified) <input type="checkbox"/>	
Electronic Image Format:		
TIFF (as per item 4 above) <input type="checkbox"/>		

Trial Preparation		
Exchange of Agreed Bundle:	Electronic Document Index Format:	To Be Delivered By:
Hard copy <input type="checkbox"/>	Delimited ASCII text file <input type="checkbox"/>	Hand Delivery <input type="checkbox"/>
Electronic copy <input type="checkbox"/>	Word Processed Format <input type="checkbox"/>	Australia Post <input type="checkbox"/>
	Spreadsheet <input type="checkbox"/>	DX <input type="checkbox"/>
	XML <input type="checkbox"/>	
	Other (to be specified) <input type="checkbox"/>	
Electronic Image Format:		
TIFF (as per item 4 above) <input type="checkbox"/>		
Court Tender/Service Provider:		
Obtain 3 Service Provider quotes <input type="checkbox"/>		
Enquire as to Court resources <input type="checkbox"/>		
Request Court to tender <input type="checkbox"/>		

5 Viruses

- 5.1 While the party supplying an electronic version of a document should make every effort to provide a virus-free copy, it is the responsibility of the recipient to check for viruses.
- 5.2 Where a copy of a document or disclosed document is provided electronically and is found by the recipient to be corrupted, infected by a virus, or otherwise unusable, a sound copy shall be provided within 1 working day of receipt of a written request, unless the original version is itself corrupted and is not reasonably practicable to repair it.

6 Questions and Further Information

- 6.1 Please contact the Court Registry in relation to questions arising on the interpretation or application of this Sample Protocol.

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7 Glossary

7.1 ASCII (American Standard Code for Information Interchange)

ASCII is the most common format for text files in computers and on the internet. In an ASCII file, each alphabetic, numeric, or special character is represented with a 7-bit binary number.

7.2 Delimiter

A delimiter is a character that identifies the beginning or the end of a character string (a contiguous sequence of characters).

7.3 HTML

HTML is the set of “mark-up” symbols or codes inserted into a file intended for display on a World Wide Web browser.

7.4 RTF

RTF is a file format that allows exchange of text files between different word processors in different operating systems.

7.5 TIF or TIFF (Tagged Imaged File Format)

TIFF is a common format for exchanging raster (bitmapped) images between application programs, including those used for scanning purposes.

7.6 XML (extensible markup language)

XML is a flexible way to create common information formats and to share both the format and the data on the World Wide Web, intranets and elsewhere.

APPENDIX 3

GUIDELINES TO COMPLETION OF FORM 19 LIST OF DOCUMENTS

1 Introduction

- 1.1 The amended Form 19 enables parties to quickly and cost effectively keep control over documents in proceedings without incurring the setup costs of a technology-based document management solution.
- 1.2 It achieves this by encouraging parties to describe documents in a consistent, unambiguous and objective way in their disclosure list and subsequently throughout proceedings.
- 1.3 As a result, parties using the amended Form 19 can expect to streamline document management during proceedings thereby reducing overall document management costs.
- 1.4 The amended Form 19 can be completed from standard word processing or spreadsheet software. So long as it is completed in accordance with these guidelines, parties will be able to subsequently transfer the contents of the Form 19 into document management software if later required, avoiding "throwing away" initial Form 19 preparation costs.
- 1.5 The amended Form 19 can also be generated from document management software.
- 1.6 As the overriding objective of the amended Form 19 is to encourage consistency, it is important that the parties adhere to the following guidelines when completing the form.
- 1.7 Parties considering using electronic document management software are encouraged to also consider Practice Direction No. 8 of 2004: "Electronic Management of Documents (www.courts.qld.gov.au) and the sample protocol (www.ecourts.courts.qld.gov.au) for the electronic exchange of information **before** actual disclosure commences.
- 1.8 For assistance with the application of Form 19, Guidelines and Practice Direction to your matter, contact the Association of Legal Support Managers (ALSM) at www.alsm.com.au or by email, info@alsm.com.au.

2 Description of documents

- 2.1 The following applies to Schedule 1 Part 1 and optionally to Schedule 1 Part 2¹:
 - (a) All documents will be described in the table format specified in Form 19.
 - (b) This information may be provided in any of the following formats:
 - (i) Word Processed document eg Word or WordPerfect;
 - (ii) Spreadsheet; or
 - (iii) An agreed exchange format (for electronic exchange purposes only).and may be produced in portrait or landscape format.

¹ Alternatively, Practitioners may elect to use a more general description

3 What is a Document ID?

- 3.1 Pages are to be consecutively numbered in the bottom right-hand corner of each page without obscuring any text.
- 3.2 The Document ID (Doc ID) is a unique identifier for each document.
- 3.3 Attachments and enclosures are to be treated as documents in their own right, described and listed separately.
- 3.4 The Document ID will include the source of the document, the folder number and the number appearing on the first page of each document. For example:

ABC.001.0001 (a 6 page document)

ABC.001.0007 (the first page of the next document)

- (a) **ABC** is the alphabetic shorthand for the party name from whom the document was sourced;
 - (b) **001** Folder number 1;
 - (c) **0001** Page of the document.
- 3.5 If a page has been inadvertently missed after the labelling process or an additional page(s) has been added, it will be given a page number, an underscore and a minimum two digit suffix number. For example, if you need to insert a page between ABC.004.0037 and ABC.004.0038, it will be called ABC.004.0037_01. If you need to insert two pages in that position the second page will be called ABC.004.0037_02.

4 Document Type

- 4.1 It is important that the parties agree to a limited number of document types and the way the document types are to be applied. For example:
 - (a) All types of deeds (ie Deed of Guarantee and Indemnity, Deed of Trust, Deed of Agreement) will be called “Deed” in the “Document Type” field, but can be further described in the “Title” field.
- 4.2 A generic list of document types is as follows.

Accounting Record	Email	Photograph
Agenda	Extract	Plan
Agreement (<i>used also for contracts and deeds</i>)	Facsimile	Policy
Annual Return	Fax Confirmation	Presentation
Article	File Cover / Divider	Receipt
Bank statement	File Note	Report

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Brochure (<i>including media/advertising material</i>)	Financial Report	Schedule
Business Card	Form	Specification
Certificate	Graph	Spreadsheet
Chart	Guidelines	Table
Cheque	Handwritten Note	Tender
Company Records	Invoice	Video
Computer Disk / CD Rom	Letter	With Compliments Slip
Computer Printout	List (<i>also used for file indexes</i>)	
Court Document	Memorandum	
Diary / Notebook	Minutes (<i>informal and formal</i>)	
Drawing (<i>used also for diagrams, designs, sketches</i>)	Note	

5 Document Title

- 5.1 Capture of Document Title is optional.
- 5.2 Where captured the Document Title is the 're', subject line or specified title of a document.

6 Author/Recipient² Name

- 6.1 An author/recipient's name will be recorded as surname [space] first initial. For example, a letter from Joe Bloggs would be described in this field as:

Bloggs J

In instances where it is necessary to distinguish between people with the same surname and initial, the full first name can be used.

- 6.2 Where the author/recipient's name is not specified but a position (eg Marketing Manager) or initials (eg JND) is specified, it should be used instead.
- 6.3 Where multiple author/recipient names are to be captured, they are to be separated by a semicolon [space]. For example:

Bloggs J; O'Reilly M; Brown A

² Please note, Recipient is referred to as Addressee in the Practice Direction.

6.4 No other punctuation is to be used in this field.

7 Author/Recipient Organisation³

7.1 Organisation names are recorded as they appear on the face of the document (ie not last name first, as is the method for Author/Recipient name). For example, A.B.C. Pty. Ltd. would be described in this field as:

ABC Pty Ltd

7.2 Where multiple organisation names are to be captured, they are to be separated by a semicolon [space]. For example:

ABC Pty Ltd; Brown & Smith Limited

7.3 No other punctuation is to be used in this field.

8 Date

8.1 The date is to be recorded as DD/MM/YYYY. For example, a letter dated 5th March 2002 should be recorded in this field as follows:

05/03/2002

8.2 If there is no date available, or, a day and a month only, insert the word “Undated”.

8.3 Where a document spans over a certain period, or contains multiple dates, insert the word “Various”.

9 Sample Form

Document ID	Document Type	Title	Author (Surname Initials)	#Author Organisation	#Recipient	#Recipient Organization	Date
ABC.001.001.001	Memorandum	Replacement Window Shop Front for Parker T		Acme Pty Ltd	Smith	Wonder Windows Inc	20.11.2001

³Please note, Recipient is referred to as Addressee in the Practice Direction.

APPENDIX 4

Practice Notes issued by the Chief Justice

CM6 – Electronic Technology in Litigation

1. Introduction

1.1 Unless the Court otherwise orders, this Practice Note applies to any proceeding in which the Court has ordered that:

- (a) discovery be given of documents in an electronic format; or
- (b) a hearing be conducted using documents in an electronic format.

1.2 It may be expected that an order of the nature mentioned in paragraph 1.1 will be made in any proceeding in which:

- (a) a significant number (in most cases, 200 or more) of the documents relevant to the proceeding have been created or are stored in an electronic format; and
- (b) the use of technology in the management of documents and conduct of the proceeding will help facilitate the quick, inexpensive and efficient resolution of the matter.

1.3 Existing Court rules and Practice Notes governing discovery and other litigation processes continue to apply unless the Court or a Judge otherwise orders.

1.4 Technical expressions used in this Practice Note and Related Materials are defined in the [Glossary](#).

1.5 This Practice Note and the Related Materials mentioned in paragraph 1.1 below are available from the Court's web site at <http://www.fedcourt.gov.au>.

2. Purpose

2.1 The purpose of this Practice Note and Related Materials is to encourage and facilitate the effective use of technology in proceedings before the Court by:

- (a) setting out the Court's expectations of how technology should be used in the conduct of proceedings before it; and
- (b) recommending a framework for the management of documents electronically in the discovery process and the conduct of trials.

3. Principles

3.1 This Practice Note is to be applied in a manner that gives effect to the overarching purpose of the Federal Court's Individual Docket System, which is: the just resolution of disputes as quickly, inexpensively and efficiently as possible.

3.2 The Court expects the parties and their representatives to cooperate with

and assist the Court in fulfilling the overarching purpose and, in particular, in identifying documents relevant to the dispute as early as possible and dealing with those documents in the most efficient way practicable.

4. Application of these Principles

4.1 The Court expects the parties to a proceeding and their legal representatives to consider, at as early a stage in the proceeding as practicable, the use of technology in the management of documents and conduct of the proceeding. In particular, it is expected that consideration will be given to the use of technology for:

- (a) creating lists of discoverable documents;
- (b) giving discovery by exchanging electronically stored information;
- (c) inspecting discovered documents and other material;
- (d) lodging documents with the Court;
- (e) delivering Court documents to, and otherwise communicating with, each party; and
- (f) presenting documents and other material to the Court during a trial.

5. Efficient Document Management

5.1 This Practice Note and the Related Materials are based upon the following observations concerning efficient document management:

- (a) Electronic documents, including email, form an increasing proportion of Documents in proceedings before the Court.
- (b) Electronic documents must be managed efficiently to minimise the cost of discovery and the cost of the trial.
- (c) Printing electronic documents for the purpose of discovery will generally be a waste of time and money.
- (d) Photocopying paper documents multiple times for the purpose of discovery will generally be a waste of time and money.
- (e) Wherever possible, parties should exchange documents in a usable, searchable format or in the format in which the documents are ordinarily maintained. The exchange format should allow the party receiving the documents the same ability to access, search, review and display the documents as the party producing the documents.
- (f) Lawyers should endeavour to use technology to ensure that document management is undertaken efficiently and effectively.
- (g) Parties should plan for appropriate discovery as early as possible in the proceedings.

6. Discovery plans

6.1 Before the Court makes an order that discovery be given using documents in an electronic format, it will expect the parties to have discussed and agreed upon a practical and cost-effective discovery plan having regard to the issues in dispute and the likely number, nature and significance of the documents that might be discoverable in relation to them.

7. Document management

7.1 The Court expects the parties to meet and confer for the purpose of reaching an agreement about the protocols to be used for the electronic exchange of documents and other issues relating to efficient document management in a proceeding.

7.2 The Court may require the parties to address these issues at a directions hearing or a case management conference.

7.3 A checklist identifying issues that the parties are expected to consider is included in the Related Materials.

8. Document Management Protocols

8.1 The Default Document Management Protocol is to be used in all proceedings to which this Practice Note applies and in which the number of Discoverable Documents is reasonably anticipated to be between 200 and 5,000, unless an alternative Document Management Protocol is agreed by the parties and accepted by the Court.

8.2 Where the number of Discoverable Documents is reasonably anticipated to exceed 5,000 Documents, the parties should agree to an Advanced Document Management Protocol in consultation with the Court.

8.3 An example of an Advanced Document Management Protocol is included in the Related Materials.

9. Use of technology in a hearing

9.1 In a proceeding to which this Practice Note applies, the Court will expect the parties to use technology efficiently and effectively in preparation for, and in the conduct of, the trial.

9.2 A checklist identifying issues that the parties are expected to consider is included in the Related Materials.

10. eRegistrars

10.1 In each registry one or more registrars have been nominated to provide advice and assistance in relation to the implementation of the Practice Note. These registrars are referred to as 'eRegistrars'. Lawyers or parties requiring information or assistance about the application of the Practice Note or the use of technology in litigation in the Court are encouraged to contact an eRegistrar. Contact details for the eRegistrars can be found at <http://www.fedcourt.gov.au>.

11. Related materials

11.1 The following Related Materials are released with this Practice Note:

- (a) [Pre-Discovery Conference Checklist](#)

- (b) [Default Document Management Protocol](#)
- (c) [An example of an Advanced Document Management Protocol](#)
- (d) [Pre-Trial Checklist](#).

11.2 The Related Materials will be reviewed and updated by the Court from time to time in light of feedback from interested parties and changes in technology.

ME J BLACK
Chief Justice
25 September 2009