

24. Practice Direction 2 of 2002 - Guidelines for the use of information technology in any civil matter.

Part 1 – Discovery.

Introduction:

1. The primary purpose of this Practice Direction is to encourage the use of information technology during the discovery process in civil litigation in the Court but parties are also encouraged to consider the use of information technology during trial. Parties are encouraged to consider these issues from the commencement of proceedings.
2. The Court may issue further Practice Directions about the use of information technology during discovery and at trial. A benefit of an agreed protocol for exchange of electronic data during discovery is the more efficient use of information technology at the hearing.
3. Parties to any civil proceedings are encouraged, where appropriate to:
 - (a) use electronic data to create lists of discoverable documents;
 - (b) undertake discovery by exchanging electronic data created in accordance with an agreed protocol;
 - (c) exchange electronic versions of documents such as pleadings and statements;
 - (d) arrange for inspection of discovered material by using electronic data, including images, where appropriate; and
 - (e) consider the use of electronic data at trial.
4. If the parties believe that they will be discovering more than 500 documents between them, they are encouraged to agree, before commencement of discovery, upon a protocol for exchanging documents and indexes in electronic format.
5. Where the parties have agreed that discovery should be undertaken by exchanging documents and indexes in electronic format, they are encouraged to:
 - (a) endeavour to reach agreement on the protocol to be used;
 - (b) seek a consent order from the Court with respect to the agreed protocol to be used; or
 - (c) seek a direction from the Court as to the protocol to be used if the parties cannot agree.

6. Where the parties agree to decide on a protocol for exchanging electronic data, the protocol should include:
 - (a) the exchange of court documents and statements in electronic format;
 - (b) the exchange of discovery lists and documents in electronic format (*including images, where appropriate*);
 - (c) the appropriate medium for exchange of electronic data during discovery; and
 - (d) the use of technology at the trial.
7. This Practice Direction provides assistance for the parties to agree upon a protocol and guidance on how to collect electronic data.
8. Parties may find the Technology Check List set out in Annexure A useful to define the information technology protocols to be agreed upon during the course of proceedings.
9. Annexure B provides guidance on the fields of data the parties should consider using to collect electronic data.
10. The Court also encourages parties, in appropriate cases, to deliver the court documents in electronic format to the trial Judge's Associate prior to the hearing. These will supplement the hard copy documents filed with the Registry.
11. Technical terms used in this Practice Direction are defined in the Glossary.

Electronic exchange of court documents:

12. Where a party serves a pleading, affidavit, statement, list of documents or interrogatories upon another party, the recipient may ask that party to provide a copy of that document in an electronic format.
13. The Court expects parties to accede to reasonable requests for copies of documents in an electronic format.
14. Subject to 16 below, where a party provides a document in electronic format, that document must contain the same text as the paper copy.
15. Where appropriate, the parties may wish to prepare a document in a structured format, such as HTML, so that hypertext links can be made where appropriate. For example, if a document refers to a Document ID, a hypertext link can be made to the relevant document image.

16. Where a document contains annexures, the party will normally be expected to provide an electronic version of those annexures together with the electronic version of the host document, provided those annexures are documents created in electronic format by or on behalf of the party or its solicitors for the purposes of the litigation.
17. The Court expects parties to make all reasonable efforts to agree on such matters as;
 - (a) the format in which electronic versions of Court documents will be provided;
 - (b) the methods by which electronic versions of Court documents are to be exchanged; and
 - (c) the terms and conditions on which electronic versions of Court documents are to be exchanged.
18. In general, it will not be regarded as unreasonable for a party to provide documents in an electronic format subject to a condition that it is the responsibility of the recipient to test for viruses.
19. The Court may direct a party to provide the Court with copies of court documents in a specified electronic format. Subject to 16 above, where a party provides the Court with a document in electronic format, that document shall be in the same format and contain the same text as the paper copy. The Court expects the party providing documents in electronic format to provide appropriate written warnings about the need to test for viruses.

Electronic exchange of discovery lists and documents:

20. The parties are encouraged, from the commencement of proceedings, to consider ways to use information technology to manage the discovery and inspection process more efficiently.
21. The most appropriate use of information technology will usually depend on the volume and categories of documents that are to be discovered. That in turn may depend on any agreement between the parties, or any direction from the Court limiting the scope of discovery
22. Decisions about the appropriate use of technology will be better informed if the parties have identified the scope of discovery and the categories of documents likely to be discoverable.
23. At directions hearings, the Court may make orders that parties -
 - (a) meet to discuss how best to use technology to exchange information about their discoverable documents or imaged copies of the documents; and

- (b) make written submissions on how best to use technology to -
 - (i) exchange information about their discoverable documents or imaged copies of the documents; and
 - (ii) manage information in the proceedings generally.
24. The Court will expect the parties to make all reasonable efforts to agree on such matters as -
- (a) the medium to be used to exchange data concerning discoverable documents and/or images of the documents;
 - (b) how data should be delimited;
 - (c) the format of the data (*for example, whether it should be in ASCII text or some other agreed format*);
 - (d) how the parties will record the date of service of the electronic data and ensure that the party providing the data and the nature of the data may be readily identified (*for example, by appropriate labels on disks, CD-Roms or other medium used to exchange data*);
 - (e) the terms and conditions on which data and/or images will be exchanged.
25. In general, it will not be regarded as unreasonable for a party to provide electronic data on the condition that it is the responsibility of the recipient to test it for viruses.
26. As a general rule, at the next directions hearing after the use of information technology has been raised, parties will be expected -
- (a) to have ascertained the number and categories of documents likely to be discoverable by that party, taking into account any limits on discovery that may be agreed between the parties or the subject of a direction by the Court;
 - (b) to have attempted to agree with each other party on whether and how to use technology to exchange lists of discoverable documents and/or imaged copies of the documents; and
 - (c) to be able to make informed submissions about whether and how information technology should be used to exchange lists of discoverable documents and/or imaged copies of the documents.

27. Parties wishing to use a database to record and exchange discovery data may refer to the table in Annexure 2. This sets out a list of fields that could be included in such a database for both discovery and case management purposes. Parties should feel free to add, modify or disregard the suggested fields to suit the requirements of the litigation.
28. Parties should also consider the possibility that data relating to their discoverable documents can be provided to the Court electronically (*in addition to any hard copy list*).

Technology for the hearing:

29. If parties have exchanged electronic data by electronic means to facilitate discovery and inspection, they should also consider and make submissions to the Court regarding how best to use information technology at the hearing.
30. For example, the parties' electronic data could form the basis for an index to an agreed bundle, for lists to assist with the tendering process, or for the creation of a database of documents admitted into evidence and rulings on the admissibility of documents.
31. More generally, parties should consider -
 - (a) the equipment and services (*including appropriate hardware, software and additional infrastructure*) that they and the Court may require at the trial; and
 - (b) the arrangements that may need to be made between the parties, the Court and any third party service providers to ensure that appropriate equipment and services are available at the hearing.

13 February 2002

Annexure A

**SUPREME COURT OF THE
NORTHERN TERRITORY OF AUSTRALIA**

INFORMATION TECHNOLOGY CHECK LIST

Parties are encouraged to use this checklist to identify information technology issues that may arise during proceedings. Ideally, this checklist should be completed at the time proceedings are commenced.

1. Checklist for court documents and witness statements.

(a) Document Format:

Select which document format that will be used for Court Documents and Witness Statements:

- Hard copy only
- Electronic only
- Hard copy and electronic copy

(b) Electronic Document Format

If electronic Court Documents and Witness Statements are to be exchanged between parties, it is suggested that documents be created in a Structured Format so that parties wishing to use tools such as hypertext links can do so.

Select which electronic format/s are to be used for preparation of Court Documents and Witness Statements:

- ASCII text file
- Word Perfect, Version
- Microsoft Word, Version
- Word Pro, Version
- RTF
- PDF
- HTML
- Other.....

2. **Document lists**

(a) **List Format**

Select the format in which Document Lists are to be prepared:

- Hard copy only
- Electronic only
- Hard copy and electronic copy

(b) **Electronic List Format**

If Document Lists are to be prepared in electronic format, select the format/s in which they will be prepared:

- ASCII text file
- Word Perfect, Version
- Microsoft Word, Version
- Word Pro, Version
- RTF
- PDF
- HTML
- Other

(c) **Data Collection Repositories**

Consideration should be given to which data collection repositories the parties will use. Some examples are:

- Microsoft Access
- Lotus Notes
- Filemaker Pro
- SQLBase
- Excel Spreadsheet

3. **Document inspection**

(a) **Document Inspection Format**

Select the format/s in which documents are to be offered for inspection:

- Hard copy only
- Electronic format and/or images of hard copy
- Both hard copy and electronic copy
- Non paper format ie an object that is not a paper document
- Combination of hard, electronic and non paper format (non paper objects should be noted in electronic data)
- Other medium

(b) ***Electronic Image Type***

If documents are to be imaged for inspection, select the image type/s that will be used:

- TIFF
- PDF
- JPEG
- GIF
- Black and White
- Colour
- Other

(c) ***Electronic Image Structure***

If documents are to be imaged for inspection, select the image structure to be used:

- Multi-Page
- Single-Page

(d) ***Image Resolution***

It is suggested that images should be scanned in at around 200 dpi; any greater and file size may be unworkable.

(e) ***File name Structure***

It is suggested that images should be named identically to the relevant Document ID.

(f) ***Special Considerations***

Consideration should be given to whether there are any special requirements such as redacting or masking.

4. **Exchange of agreed bundle/court book indexes**

(a) ***Document Inspection Format***

Select the format in which the agreed bundle/court book index will be prepared:

- Hard copy only
- Electronic format and/or images of hard copy
- Both hard copy and electronic copy
- Other medium

(b) ***Electronic Document Index Format***

If an electronic document index is to be used, select the format in which the index will be prepared:

- Delimited ASCII text file
- Word Processing Format
- Excel Spreadsheet
- Database Tables
- Other

5. ***Document exchange method***

Select the method by which Court Documents and Witness Statements, Documents Lists and Indexes are to be exchanged:

- DX
- Court Box
- Courier
- Australia Post
- Floppy disk
- CD-Rom
- Electronic Mail
- Internet
- Intranet

Annexure B

SUPREME COURT OF THE NORTHERN TERRITORY OF AUSTRALIA

SUGGESTED FIELDS

| SUGGESTED FIELD | DATA TYPE AND LENGTH OF FIELD | NOTES |
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| Document ID | Text and Numbers; length depends on field structure. | <p>Each document should be uniquely identified. The parties should agree upon a consistent format for capturing <i>Document ID</i> before discovery is commenced. Some suggestions for capture of <i>Document ID</i> are set out below.</p> <p>The field may be broken into different components such as First Page and Last Page. The field or fields might comprise a 4 part number in the form of AAA.NNN.NNN.NNNN where “AAA” represents an alphabetic shorthand for the party name. The other 3 sets of numbers could be used to suit the convenience of the parties. It may be useful if the first set is used to refer to an archive box number, the second to the number of the folder within the box, and the third to the page number.</p> <p>Consideration should be given to number those pages or documents that are accidentally omitted; a suffix may be added to the <i>Document ID</i>, for example, if a page has a <i>Document ID</i> XXX.001.001.0002 and a page has to be added, the added page <i>Document ID</i> may be XXX.001.001.0002_A.</p> <p>The parties should consider whether each page should be individually numbered or agree on some other satisfactory arrangement. If agreement is not reached then the parties should seek the Court’s direction.</p> <p>If the parties agree not to number each page, consideration should be given to an</p> |

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| | | <p>additional field recording the number of pages in each document.</p> <p>Attachments to documents may be separately listed and numbered. Attachments can be numbered sequentially following the host document. For example, if a host document was numbered XXX.001.001.0001 then its attachments would be numbered as XXX.001.001.0002, XXX.001.001.0003 and XXX.001.001.0004.</p> <p>If documents are to be imaged, the parties may agree on additional information about document identification.</p> <p>Some image file names may be restricted to a maximum of 8 characters; this may affect the <i>Document ID</i> structure if documents are to be imaged and image files are to be named identically to the <i>Document ID</i></p> |
| Attachments | Text and Numbers; length depends on the number of attachments | <p>The <i>Attachments</i> field does not include documents that are only referred to in a discovered document.</p> <p>Each attachment can be listed separately, with its own discovery number and details.</p> <p>It is important to agree on the correct separator to be used where there are multiple <i>Attachments</i>; for example, if a comma is used as a separator, this may cause problems in some exchange formats such as comma delimited files.</p> |
| Host Document Number | Text and Numbers; length depends on <i>Document ID</i> structure | <p>The <i>Host Document</i> Number field contains First Page and, if agreed, Last Page of the host document to which an attachment is attached. Each attachment should only ever have one host document.</p> |
| Document Group Document | Text, 3 | <p>Suggested naming conventions for the <i>Document Group</i> field are:</p> <p>HWA: Host with attachment HNA: Host no attachment ATT: Attachment</p> <p>The <i>Document Group</i> field may be required</p> |

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| | | if parties agree to exchange image files. |
| Date | Date, 10, or Text, 25 (to be agreed) | Depending on the databases used, and exchange formats agreed, the <i>Date</i> field may be a Date field or a Text field. If a date range is to be used (for example, where Bundles of Documents are being referred to), then a text field should be used; alternatively, the parties may agree that instead of using one <i>Date</i> field, two date fields may be used eg "Date From" and "Date To". |
| | | <p><i>Date</i> can be inserted as: DD/MM/YYYY for example 05/09/1996 Where DD=Day, MM-Month and YYYY=Year</p> <p>If there is no way of ascertaining the date of the document, then the parties may agree upon what naming convention to use, for example, "Undated", or 00/00/0000, however, it should be noted that some database formats may not recognise these codes.</p> <p>It is suggested that documents with only the month and year (ie. August 1997) can be coded as 01/08/1997 and an entry made in the <i>Estimated Date</i> field.</p> <p>Documents with the day and month but no year should be considered as undated documents. For example a document dated 04/04 will be coded as if it were undated.</p> |
| Estimated Date | Text, 3 | <p>The <i>Estimated Date</i> field should be left blank if a date is clearly evident on the document (for example 04/08/1963).</p> <p>This field should be completed as "Yes" where the actual date of the document cannot be ascertained for certain. For example if a partial date is shown on the document (eg. August 1979), the date has been stamped on, the date has been amended by hand or the only visible date is on a fax machine print out, then this field should be marked "Yes".</p> <p>If a document contains what may be an</p> |

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| | | <p>original date as well as a subsequent date (possibly as a result of alterations being made to the document), it is suggested that the later date should be taken as the document date and the <i>Estimated Date</i> field should be left blank.</p> <p>If, for example, a newspaper clipping has a handwritten date only, then it is suggested that the handwritten date should be recorded and that the <i>Estimated Date</i> field should be marked "Yes".</p> <p>Other options that may be considered for this field are:</p> <ul style="list-style-type: none"> • AFT=After • BEF=Before • MTH=Month • ABT=About |
| Document Type | Text, 254 | <p>The <i>Document Type</i> field can be completed using commonly received document types, for example: "Letter", "Memo", "Deed", "Coversheet".</p> <p>Parties should endeavour to create a list of agreed <i>Document Types</i> prior to discovery.</p> <p>If the document has been faxed, this field can include "Facsimile".</p> <p>If a group of documents is being discovered as a bundle, this field may be completed as "Bundle of <i>Document Type</i>".</p> |
| Document Classification | Text, 254 | <p>The <i>Document Classification</i> field can specify whether the document is handwritten, draft, a duplicate or a fax. For example, <i>Document Type</i> may be "Coversheet" and <i>Document Classification</i> may be "Fax".</p> |
| Privilege | Text, 6 | <p>The <i>Privilege</i> field identifies whether privilege has been claimed over the document. The permissible entries in this field are "Yes", "No", and "Part".</p> <p>If this field is completed with "Yes", or "Part", the <i>Privilege Basis</i> field should also be completed.</p> |

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| Privilege Basis | Text, 50 (or combination of text and numbers) | The <i>Privilege Basis</i> field identifies the basis on which privilege is claimed over the document. Parties may agree on the way in which privilege may be claimed. One possibility is to set out the type of privilege claimed, or the section or sections of any statute on which a party relies to claim that a document is privileged. |
| Status | Text 10 | The <i>Status</i> field will simply be either "Copy" or "Original" |
| Author | Text, 254 or as appropriate | <p>The <i>Author</i> field identifies the person or persons who wrote the document. This field should be completed using information on the face of the document.</p> <p>It is important that names of persons be captured consistently and parties should agree on a consistent name capture format. A suggested way to capture names is to use surname first, followed by the person's initial, for example, "Smith, A". It is also important to ensure that people of the same name are not captured in different ways, for example, "Smith, A" may be Anthony Smith who is also called Tony: there is a danger that this person may be captured as "Smith, T".</p> <p>If a document has multiple <i>Authors</i>, then it is important to agree upon which separator symbols will be used. For example, these names may be captured as "Brown J/Jones J ..." etc, or as "Brown J, Jones J ..." etc.</p> <p>It is important to agree upon the separator to be used; for example, if a comma is used as a separator, this may cause problems in some exchange formats such as comma delimited files.</p> |
| Author Organisation | Text, 254 or as appropriate | <p>The <i>Author Organisation</i> field captures the organisation from which the document was produced. This field should be completed from the information on the face of the document.</p> <p>The standard spellings and/or abbreviations to be used to identify</p> |

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| | | <p><i>Organisations</i> should be agreed by the parties prior to document preparation being commenced.</p> <p>It is important to agree on the correct separator to be used where there are multiple <i>Author Organisations</i> (see explanation in <i>Author</i> above).</p> |
| Addressee | Text, 254 or as appropriate | <p>The <i>Addressee</i> field identifies the person or persons to whom the document is addressed. This field may include persons to whom copies are circulated. This field is to be completed from information on the face of the document.</p> <p>See explanation in <i>Author</i> above for a suggested way to capture names.</p> <p>It is important to agree on the correct separator to be used where there are multiple <i>Addressees</i> (see explanation in <i>Author</i> above).</p> |
| Addressee Organisation | Text, 254 or as appropriate | <p>The <i>Addressee Organisation</i> field identifies the organisation to which the document is addressed. This field is to be completed from information on the face of the document.</p> <p>The standard spellings and/or abbreviations to be used to identify <i>Addressee Organisations</i> should be agreed by the parties prior to document preparation being commenced.</p> <p>It is important to agree on the correct separator to be used where there are multiple <i>Addressee Organisations</i>; for example (see explanation in <i>Author</i> above).</p> |
| Parties | Text, 254 or as appropriate | <p>The <i>Parties</i> field identifies the parties to an agreement or other legal document (not correspondence).</p> <p>It is important to agree on the correct separator to be used where there are multiple <i>Parties</i> (see explanation in <i>Author</i> above).</p> |
| Source | Text, 20 or as appropriate | <p>Parties may find the <i>Source</i> field useful to identify documents that have been obtained from someone other than the</p> |

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| | | <p>party making discovery; for example, documents that have been obtained on subpoena or through some other compulsory process of obtaining access to documents.</p> <p>This field would identify the party from whom such documents were obtained.</p> |
| Non-Paper Record | Text, 3 | <p>The <i>Non-Paper Record</i> field can be used to identify discoverable items that are not "documents". These items may be objects such as video and audio tapes, disks, etc. Entries should be either "Yes" or "No".</p> |

Annexure C

GLOSSARY

ASCII (American Standard Code for Information Interchange)

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

CD-Rom

This is a medium that can store digital data. A CD-Rom's storage capacity is approximately 650 megabytes.

Database

A database is a collection of data that is organised so that its contents can easily be accessed, managed and updated.

Delimiter

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

Diskette (Floppy Disk)

A diskette is a random access, removable data storage medium that can be used with personal computers. A Floppy Disk's storage capacity is approximately 1.44 megabytes.

DPI (Dots Per Inch)

This is a measure of resolution for digital images and is also used for printers, scanners and displays.

Electronic Data

Electronic data is information that can be used on a computer. The electronic data may have been information in hard copy that has been converted to an electronic format so that it is more convenient to move or process than hard copy. Alternatively, the electronic data may have been created in electronic format.

Field

A Field represents a column of data within a database. Each record (row) can be made up of a number of pieces of information and, therefore, consists of a number of fields. These fields may be displayed as a box to enter or display data (in a form or report).

GIF (Graphics Interchange Format)

A GIF is one of the two most common file formats for graphic images on the World Wide Web. The other is JPEG.

HTML (Hypertext Markup Language)

HTML is the set of “markup” symbols or codes inserted in a file intended for display on a World Wide Web browser.

JPEG (Joint Photographics Experts Group)

A standard algorithm for the compression of digital images. JPEG format allows a digital image to be stored as a compressed file.

Image

An image is a picture that has been created or copied and stored in electronic form; it is like an electronic photocopy.

Medium

A medium is a third-party or element through which information is communicated.

PDF (Portable Document Format)

PDF has been developed by Adobe Systems Inc. It is a file format for representing documents in a manner that is independent of the original application software, hardware, and operating system used to create those documents. Software to read PDF files is freely available on the Internet at www.adobe.com

A PDF file can describe documents containing any combination of text, graphics, and images in a device-independent and resolution independent format. These documents can be one page or thousands of pages, very simple or extremely complex with a rich use of fonts, graphics, colour and images.

Redacting

A method of masking, or “blacking out” text, such as confidential information within a document.

RTF (Rich Text Format)

RTF is a file format that allows text files to be exchanged between different word processors in different operating systems.

SQL (Structured Query Language)

SQL is a standard interactive and programming language for getting information from and updating a database.

Structured Format

Electronic documents that are created in a structured format means that parts of the document can be recognised by a computer in a certain way. For example, if a “mark”, or “tag” is placed next to a Document ID noted in a Witness Statement, a computer program can be written to recognise that Document ID and place a hypertext link to the image of the document.

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 images.

Virus

A virus is a piece of programming code inserted into other programming to cause some unexpected and, for the victim, usually undesirable event. Viruses can be transmitted by downloading programs from infected sites (*including Internet sites*) or they may be present on an electronic file received from an infected system.