

SUPREME COURT OF TASMANIA

PRACTICE DIRECTION

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The following Practice Direction is published by direction of the Chief Justice, the Honourable Justice Alan Blow OAM.

EXPERT OPINION EVIDENCE – EXPERT EVIDENCE CODE OF CONDUCT

On 6 January 2016 amendments to rules 514, 515 and 516 *Supreme Court Rules 2000* will commence. The amended rules refer to an Expert Witness Code of Conduct which has been developed by the Harmonisation of Rules Committee, a committee established by the Council of Chief Justices.

The Council of Chief Justices has approved the Code for adoption as a uniform code. The Code contains requirements similar, but not identical, to those previously imposed by the rules.

The amended rules require every expert witness to comply with the Code unless the Court or a judge orders or directs otherwise. The Expert Witness Code of Conduct is attached.

EXPERT WITNESS CODE OF CONDUCT

Application of Code

- 1 This Code of Conduct applies to any expert witness engaged or appointed:
 - (a) to provide an expert's report for use as evidence in proceedings or proposed proceedings; or
 - (b) to give opinion evidence in proceedings or proposed proceedings.

General Duties to the Court

- 2 An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the Court impartially on matters relevant to the area of expertise of the witness.

Content of Report

- 3 Every report prepared by an expert witness for use in Court shall clearly state the opinion or opinions of the expert and shall state, specify or provide —
 - (a) the name and address of the expert;
 - (b) an acknowledgment that the expert has read this code and agrees to be bound by it;
 - (c) the qualifications of the expert to prepare the report;
 - (d) the assumptions and material facts on which each opinion expressed in the report is based (a letter of instruction may be annexed);
 - (e) the reasons for and any literature or other materials utilised in support of each such opinion;
 - (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;
 - (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;

- (h) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person;
- (i) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;
- (j) any qualification of an opinion expressed in the report without which the report is or may be incomplete or inaccurate;
- (k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason; and
- (l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

Supplementary Report Following Change of Opinion

- 4 Where an expert witness has provided to a party (or that party's legal representative) a report for use in Court, and the expert thereafter changes his or her opinion on a material matter, the expert shall forthwith provide to the party (or that party's legal representative) a supplementary report which shall state, specify or provide the information referred to in paragraphs (a), (d), (e), (g), (h), (i), (j), (k) and (l) of clause 3 of this code and, if applicable, paragraph (f) of that clause.
- 5 In any subsequent report (whether prepared in accordance with clause 4 or not) the expert may refer to material contained in the earlier report without repeating it.

Duty to Comply with the Court's Directions

- 6 If directed to do so by the Court, an expert witness shall —

- (a) confer with any other expert witness;
- (b) provide the Court with a joint report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing; and
- (c) abide in a timely way by any direction of the Court.

Conferences of Experts

7 Each expert witness shall —

- (a) exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the Court and in relation to each report thereafter provided, and shall not act on any instruction or request to withhold or avoid agreement; and
- (b) endeavour to reach agreement with the other expert witness (or witnesses) on any issue in dispute between them, or failing agreement, endeavour to identify and clarify the basis of disagreement on the issues which are in dispute.