

GENERAL DIVISION
PRACTICE DIRECTION I

This Practice Direction is made pursuant to s93 of the *Tasmanian Civil and Administrative Tribunal Act 2020*.

- I.1 Expert witnesses engaged for the purposes of matters before the General Division of the Tribunal must be aware of and agree to comply with the Expert Witness Code of Conduct annexed and marked A



Malcolm Schyvens
President – TASCAT
1 June 2023

Annexure A

EXPERT WITNESS CODE OF CONDUCT

Expert Witness Code of Conduct

1. Application of code

This code of conduct applies to any expert witness engaged or appointed:

- a) To provide an expert's statement of evidence for use as evidence in proceedings or proposed proceedings, or
- b) To give opinion evidence in proceedings or proposed proceedings.

2. General duty to the Tribunal

- a) An expert witness has an overriding duty to assist the Tribunal impartially on matters relevant to the expert witness's area of expertise.
- b) An expert witness's paramount duty is to the Tribunal and not to any party to the proceedings (including the person retaining the expert witness).
- c) An expert witness is not an advocate for a party.

3. Duty to comply with Tribunal's directions

An expert witness must abide by any direction of the Tribunal.

4. Duty to work co-operatively with other expert witnesses

An expert witness, when complying with any direction of the Tribunal to confer with another expert witness or to prepare a party's expert's statement of evidence with another expert witness in relation to any issue:

- a) Must exercise independent, professional judgment in relation to that issue, and
- b) Must endeavour to reach agreement with any other expert witness(es) on that issue, and
- c) Must not act on any instruction or request to withhold or avoid agreement with any other expert witness(es).

5. Experts' reports

- a) An expert's statement of evidence must (in the body of the statement or in an annexure to it) include the following:
 - i. the name and address of the expert;

- ii. an acknowledgment that the expert has read this code and agrees to be bound by it;
 - iii. the expert's qualifications as an expert on the issue the subject of the report;
 - iv. the assumptions and material facts on which each opinion expressed in the report is based (a letter of instruction may be annexed);
 - v. the reasons for any opinion expressed;
 - vi. any literature or other materials utilised in support of each such opinion;
 - vii. (if applicable) a statement that a particular question, issue or matter falls outside the expert's field of expertise;
 - viii. any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;
 - ix. 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;
 - x. 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 Tribunal;
 - xi. in the case of a statement of evidence that is lengthy or complex, a brief summary of the statement (to be located at the beginning of the statement).
- b) Where an expert believes that a statement of evidence may be incomplete or inaccurate without some qualification, that qualification must be stated in the statement.
 - c) If an expert witness considers that his or her opinion is not a concluded opinion because of insufficient research or insufficient data or for any other reason, this must be stated when the opinion is expressed.
 - d) If an expert witness changes an opinion on a material matter after providing an expert's statement to the engaging party (or that party's legal representative), the expert witness must forthwith provide the party (or legal representative) with a supplementary statement to that effect containing such of the information referred to in clause 5(a) above as is appropriate.

6. Conference of Experts

- a) Without limiting clause 3 above, an expert witness must abide by any direction of the Tribunal:
 - i) to confer with any other expert witness(es);
 - ii) to endeavour to reach agreement on any matters in issue;

- iii) to prepare a joint report, specifying matters agreed and matters not agreed and reasons for any disagreement; or
 - iv) to base any joint report on specified facts or assumptions of fact.
- b) An expert witness must exercise independent, professional judgment in relation to such a conference and joint report, and must not act on any instruction or request to withhold or avoid agreement.

7. Joint reports arising from experts' conferences

- a) This clause applies if expert witnesses prepare a joint report as referred to in clause 6 above.
- b) The joint report must specify matters agreed and matters not agreed and the reasons for any disagreement.
- c) The joint report may be received at the hearing as evidence of any matters agreed.
- d) In relation to any matters not agreed, the joint report may be used or tendered at the hearing only in accordance with the practices of the Tribunal.
- e) Except by leave of the Tribunal, a party affected may not adduce evidence from any other expert witness on the issues dealt with in the joint report.

8. Resource and Planning Stream

The following applies to expert witnesses called in the Resource and Planning Stream.

- 8.1 Where parties call expert witnesses who share the same fields of expertise, those experts are directed to:
- a) confer as if directed pursuant to clause 6; and
 - b) endeavour to reach agreement on matters in issue; and
 - c) to file with the Tribunal and serve on each party 72 hours prior to the hearing, a joint statement in accordance with clause 7.