

PRACTICE DIRECTION 12: Expert Witnesses

12.1 OVERVIEW: This Practice Direction governs the giving of evidence by expert witnesses. It sets out the guidelines for the content and format of expert testimony as well as the expectations, responsibilities and duties of expert witnesses in the Tribunal processes.

12.2 EXPERT EVIDENCE IN CHIEF: An expert witness's evidence must be contained in one or more statements of evidence, unless the Tribunal otherwise directs.

12.3 GENERAL DUTIES AND CODE OF CONDUCT:

- a) An expert witness must comply with the Code of Conduct set out in Appendix 12A.
- b) As soon as practicable after an expert witness is engaged or appointed the engaging party must provide the expert witness with a copy of the code of conduct.
- c) An expert's statement of evidence may not be produced in evidence unless it contains an acknowledgment that the author has read the code of conduct and agrees to be bound by it, unless the Tribunal otherwise orders.
- d) Oral evidence may not be received from an expert witness unless the Tribunal is satisfied that the expert witness has acknowledged, whether in an expert report prepared in relation to the proceedings or otherwise in relation to the proceedings, that he or she has read the code of conduct and agrees to be bound by it, unless the Tribunal otherwise orders.
- e) An expert witness is not an advocate for a party. Where the same person represents a party at a hearing and gives evidence as an expert, there is a clear conflict between the overriding duty to the Tribunal and the duty to the party (client). The result may be that the evidence given by that witness is not accorded the same weight which would be given to an expert who does not appear as an advocate.

12.4 THE CONTEXT AND FORMAT OF EXPERT EVIDENCE:

- a) Any statement of evidence must comply with formatting requirements set out in *Practice Direction 8.6*.

- b) A statement of evidence can refer to, but is not to repeat, any information contained in a Statement of Facts and Contentions (where prepared pursuant to *Practice Direction 10*) unless the expert contends that such information is incorrect or inaccurate.

12.5 CONFERENCES BETWEEN EXPERT WITNESSES

The Tribunal directs expert witnesses to:

- a) confer, and
- b) endeavour to reach agreement on matters in issue,
- c) and to file within seven days of the hearing, a statement which identifies those matters which are agreed, or otherwise certifies that a conference has occurred and that no matters could be agreed between them.

12.6 JOINT REPORTS OF EXPERTS

The Tribunal may also direct expert witnesses to:

- a) prepare a joint report, specifying matters agreed and matters not agreed and reasons for any disagreement, and
- b) base any joint report on specified facts or assumptions of fact,

and may do so at any time, whether before or after the expert witnesses have furnished any individual statements of evidence.

The Tribunal may direct that a conference be held:

- (a) with or without the attendance of the parties affected or their legal representatives, or
- (b) with or without the attendance of the parties affected or their legal representatives, at the option of the parties, or
- (c) with or without the attendance of a facilitator (that is, a person who is independent of the parties and who may or may not be an expert in relation to the matters in issue).

Expert witnesses so directed may apply to the Tribunal for further directions to assist in any aspect of the performance of their functions.

Any such application must be made by sending a written request for directions to the Tribunal, specifying the matter in relation to which directions are sought.

An expert witness who makes such an application must send a copy of the request to the other expert witnesses and to the parties to the proceedings.

12.7 JOINT STATEMENTS OF EVIDENCE ARISING FROM CONFERENCES BETWEEN EXPERT WITNESSES:

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

12.8 EXPERTS JOINTLY CALLED BY PARTIES OR CONCURRENT TESTIMONY: The Tribunal may direct that evidence from more than one expert in the same discipline is to be given concurrently at the hearing.

12.9 NOTICE OF CROSS EXAMINATION REQUIRED: If a party requires any expert for cross-examination, notice is to be given at least three days before the hearing.