

ANNEXURE C
DISTRICT COURT OF WESTERN AUSTRALIA
CODE OF CONDUCT – EXPERT WITNESSES

1. Application of Code

- 1.1 This Code of Conduct applies to any expert engaged to:
- (a) provide a report as to his or her opinion for use as evidence in proceedings or proposed proceedings, or
 - (b) give opinion evidence in proceedings or proposed proceedings.
- 1.2 The Code of Conduct does not apply to medical evidence in actions for personal injuries.

2. General Duty to the Court

- 2.1 An expert witness has an overriding duty to assist the Court on matters relevant to the expert's area of expertise.
- 2.2 An expert witness is not an advocate for a party.
- 2.3 An expert witness's paramount duty is to the Court and not to the person retaining the expert.

3. Form of Experts' Reports

- 3.1 The expert's report must certify at the commencement of the report that:
- (a) the expert has been provided with this Code of Conduct prior to preparing the expert's report;
 - (b) the report complies with the Code of Conduct.
- 3.2 An expert's written report will set out in summary form the qualifications and experience of the expert which are relied upon to qualify the expert to give the report.

Note: Under the District Court Rules 2005, another party to the action may require the expert to provide a full statement of his or her qualifications and experience.

- 3.3 The report will give particulars identifying the material upon which the expert bases his or her expert opinion.
- 3.4 If any tests or experiments are relied upon by the expert in compiling the report, the report will contain details of the qualifications of the person who carried out any such tests or experiments.
- 3.5 Where an expert's report refers to photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter, these must be provided to the opposite party at the same time as the delivery of the report.

- 3.6 The report will set out all of the factual findings or assumptions upon which any opinion is based. The opinions which the expert expresses will be in a clearly identified separate section from the factual findings and assumptions.
- 3.7 The expert should give reasons for each opinion. The reasons should be in sufficient detail so that another expert in the same discipline can understand the reasoning process used by the expert who prepared the report.
- 3.8 If an expert opinion is not fully researched because the expert considers that insufficient data is available – or for any other reason, this must be stated with an indication that the opinion is no more than a provisional one. Where an expert witness who has prepared a report believes that it may be incomplete or inaccurate without some qualification, that qualification must be stated in the report.
- 3.9 The expert should make it clear when a particular question or issue falls outside his or her field of expertise.
- 3.10 At the end of the report the expert must make the following declaration:

"I [name] have made all inquiries which I believe are desirable and appropriate and that no matters of significance which I regard as relevant have, to my knowledge, been withheld from the Court."

4. Experts' Conference

- 4.1 An expert witness must abide by any direction of the Court to:
- (a) confer with any other expert witness;
 - (b) endeavour to reach agreement on material matters for expert opinion, and
 - (c) provide the Court with a joint report and specifying matters agreed and matters not agreed and the reasons for any non agreement.
- 4.2 An expert witness must exercise his or her 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.

5. Ongoing Obligations of an Expert and the Party Retaining the Expert

- 5.1 If, after exchange of reports or at any stage, an expert witness changes his or her view on a material matter, having read another expert's report or for any other reason, the change of view should be communicated in writing (through legal representatives) without delay to each party to whom the expert witness's report has been provided and, when appropriate, to the Court.